



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT NAIROBI**

**ELC CASE NO. 1626 OF 2016**

**AFYARE ENTERPRISES COMPANY LIMITED.....PLAINTIFF**

**VERSUS**

**GIDEON KIREMA MUGAMBI.....1ST DEFENDANT**

**MAX GAS AND LOGISTICS LIMITED .....2ND DEFENDANT**

**THE CHIEF LAND REGISTRAR NAIROBI .....3RD DEFENDANT**

**GLADYS KALUYU MUGAMBI .....INTERESTED PARTY**

**RULING**

1. Before me for determination is the plaintiff's application dated 5/8/2020 through which the plaintiff seeks leave of the court to amend the plaint dated 22/12/2016. The application was supported by an affidavit sworn by Hassan Abdi Warsame, a director of the plaintiff. He deposed that the plaint dated 22/12/2016 was drawn before the current developments on the suit property were erected. He added that it was, in the circumstances, necessary to amend the plaint to include a plea for demolition of the said developments in the event the plaintiff's claim succeeds.

2. The 1st defendant, through Mr Gichuru –Advocate, neither opposed nor supported the application. They left it to the court to make a decision. Similarly, the interested party, through Ms Judy Thongori SC, neither opposed nor supported the application.

3. The 2nd defendant opposed the application through a replying affidavit sworn on 21/10/2020 by Ahmed Mohamed Elmi. He deposed that upon acquiring the suit property, the 2nd defendant demolished the then existing developments and constructed new developments on the suit property. He added that the application should not be allowed because the amendments would expose the 2nd defendant to injustice.

4. The application was canvassed through written submissions dated 2/12/2020. The 2nd defendant responded through rival written submissions dated 30/11/2020.

5. I have considered the application, the 2nd defendant's replying affidavit, and the rival written submissions in support of and against the application. The single question falling for determination in this application is whether the applicant has satisfied the criteria upon which our courts exercise jurisdiction to grant leave to amend pleadings.

6. Jurisdiction to grant leave to amend pleadings is exercised within the framework of **Order 8 rule 3 (1)** of the **Civil Procedure Rules** which provides as follows:

***Subject to Order 1, rules 9 and 10, Order 24, rules 3, 4, 5 and 6 and the following provisions of this rule, the court may at any stage of the proceedings, on such terms as to costs or otherwise as may be just and in such manner as it may direct, allow any party to amend his pleadings.***

7. The guiding principle applicable when exercising jurisdiction to grant leave to amend pleadings is that amendments sought before the hearing of a suit should be freely allowed if they can be effected without exposing the other side to an injustice. Secondly, there would be no injustice if the other side can be compensated by costs [see **Eastern Bakery v Castelino [1958] E.A 461**].

8. I have looked at the draft amended plaint attached to the present application. The plaintiff seeks to improve on the efficacy of the reliefs sought in the plaint by adding a plea that the developments erected on the suit property by the 2nd defendant be demolished in the event that the plaintiff's claim succeeds. In my view, the intended amendments do not introduce a new cause of action; they flow from the same set of facts which have already been pleaded in the existing plaint. More important, there is no evidence of any likely prejudice or injustice which any of the defendants will be exposed to by the said amendments. Consequently, the court is satisfied that the applicant has met the criteria for grant of leave to amend pleadings.

9. The net result is that the plaintiff is granted leave to amend the plaint dated 22/12/2016 strictly in terms of the draft amended plaint attached to the application dated 5/8/2020. The amended plaint shall be filed and served within 14 days from today. The defendants shall have corresponding leave to file and serve amended defences within 14 days from the date of service. The amendments by the defendants shall be limited to the pleadings introduced through the amended plaint.

10. Costs of the application shall be in the cause.

**DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 13TH DAY OF MAY 2021.**

**B M EBOSO**

**JUDGE**

**In the Presence of: -**

Mr Sumba for the Plaintiff

Ms Kadzungu holding brief for Ms Ndirangu for the Interested Party

Court Assistant: June Nafula