



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS**

**ELC. CASE NO. 247 OF 2017**

**KIMURI HOUSING COMPANY LIMITED.....PLAINTIFF**

**VERSUS**

**LUKENYA RANCHING CO-OPERATIVE**

**SOCIETY LIMITED.....1<sup>ST</sup> DEFENDANT**

**MWANZO DEVELOPMENT COMPANY LTD.....2<sup>ND</sup> DEFENDANT**

**MUTIE WILLY.....3<sup>RD</sup> DEFENDANT**

**MURIITHIA WA-ANDU COMPANY LIMITED.....4<sup>TH</sup> DEFENDANT**

**COMMISSIONER OF LANDS.....5<sup>TH</sup> DEFENDANT**

**RULING**

1. In the Notice of Motion dated 2<sup>nd</sup> December, 2019, the Plaintiff has sought for the following orders:

***a. That leave be granted to the Plaintiff herein to file and serve a Further Amended Plaintiff in this matter to include paragraphs 22(h) and 22(i) therein;***

***b. That the costs of this Application be in the cause.***

2. The Application is supported by the Affidavit of the Plaintiff's Advocate who has deponed that on 15<sup>th</sup> May, 2019, the 2<sup>nd</sup> Defendant filed a List of Documents including a Sale Agreement between itself and Daniel Kivuu Mulwa dated 3<sup>rd</sup> May, 1995 and that the signatures of the parties to the agreement was attested by Ameura Amedi and Company advocates.

3. According to the Plaintiff's advocate, by its letter dated 1<sup>st</sup> July, 2019, the Law Society of Kenya has confirmed that they do not have such an advocate in its records and that on that basis, it has become imperative that the Plaintiff re-amends the Plaintiff to add further particulars of fraud. There is no indication on record to show that the Defendants filed responses to the Application. The Plaintiff's advocate filed submissions in respect to the Application which I have considered.

4. The Application before me is for amendment of the Plaintiff. The Plaintiff's Advocate has deponed that the Application for leave to amend the Plaintiff was occasioned by the information they received from the Law Society of Kenya indicating that the person who purported to attest the signatures of the parties in the Sale Agreement of 3<sup>rd</sup> May, 1995 is not in their records.

5. In the case of *Eastern Bakery vs. Castelino (1958) E.A 461*, the Court of Appeal for Eastern Africa held as follows:

*"It will be sufficient to say that amendments to pleadings sought before the hearing should be freely allowed, if they can be made without injustice to the other side..."*

6. In *Maria Rosita Cardozo vs. Robert Kibagendi Otachi and Another (2013) eKLR*, the Court of Appeal held as follows:

*"The overriding consideration in applications for leave is whether the amendments are necessary for the just determination of the controversy between the parties. Likewise, mere delay is not a ground for declining to grant leave. It must be such delay as likely to*

*prejudice the opposite side beyond monetary compensation in costs...*

7. Considering that the Application for amendment of the Plaintiff has not been opposed, and in view of the fact that the Plaintiff is seeking to introduce in the Plaintiff further particulars of fraud based on the letter it received from the Law Society of Kenya, I find the Application for amendment to be merited.

8. Order 8 Rule 3 of the Civil Procedure Rules allows parties, with the leave of the court, to amend their pleadings at any stage. For those reasons, I allow the Application dated 2<sup>nd</sup> December, 2019 as follows:

*a. Leave is hereby granted to the Plaintiff to file and serve a Further Amended Plaintiff within fourteen (14) days.*

*b. Each party to bear his/its own costs.*

**DATED, SIGNED AND DELIVERED VIRTUALLY IN MACHAKOS THIS 4<sup>TH</sup> DAY OF JUNE, 2021.**

**O. A. ANGOTE**

**JUDGE**