



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT & LAND COURT**

**AT MURANG'A**

**E.L.C NO. 23 OF 2020 (OS)**

**HENRY GITAU MUHURA**

**(suing as an administrator of the Estate of MUHURA GICHINI Deceased....1<sup>ST</sup> RESPONDENT**

**AGNES NJOKI MUHURA.....2<sup>ND</sup> RESPONDENT**

**JOSPHAT IRUNGU MUHURA.....3<sup>RD</sup> RESPONDENT**

**STEPHEN KARANJA MUHURA.....4<sup>TH</sup> RESPONDENT**

**MBOTE GICHINI.....5<sup>TH</sup> RESPONDENT**

**VS**

**BERNARD MUTURI KARANJA**

**(sued as the legal administrator of the estate of the late MWANGI GICHINI.....APPLICANT**

**RULING**

1. Vide a Notice of Motion dated the 25/5/2021 the Applicant sought the following orders;

a. that the amended Originating summons dated the 16/4/2021 be struck off for reasons that it was filed without leave of the court as required under order 8 rule 3 of the CPR and read together with rules 3 and 4 of the said rules.

b. The cost of the application be provided.

2. The application is supported by the affidavit of the Applicant where he states that the amended summons was filed without the leave of the court and thus is defective in all respects. That the issue of locus of the Respondents had been pointed out in his Replying affidavit which prompted the Respondents to obtain a grant ad litem, 4 months after filing the suit. That the action of filing the amended summons can only be termed as mischievous and that the anomaly in the suit cannot be cured by the grant ad litem as the same cannot apply retrospectively. That the amended summon is meant to frustrate the arguments of the Applicant to the effect that the summons were not properly before the court.

3. In opposing the motion, the Respondents vide a Replying affidavit dated the 16/6/2020 sought leave under Order 8 Rule 8 of the CPR through his counsel on record on the 16/3/2020 for leave to amend the originating summons, which leave was granted. That the said rule allows for oral application to amend pleadings. That the amended pleading is in order and is proper before the court. That the amendments did not introduce any new cause of action and therefore no prejudice will be visited upon the Applicant.

4. Parties elected to canvass the application by written submissions. By the time of writing the ruling it is only the Applicant that filed written submissions.

5. I have read and considered the written submissions on record.

6. The Respondents filed originating summons on the 22/9/2020 seeking orders of customary trust against the Applicant herein.

7. On the 17/2/2021 when the matter came up for directions, the Respondents informed the court that they will be seeking leave to file an amended originating summons once they are in receipt of a grant ad litem from the subordinate court. The Applicant opposed the oral application for amendment wherein the court ordered the Respondent to move the court formally and was granted leave of 14 days to file the application if need be.

8. It is trite that pleadings may be amended before close of pleadings. In this case the amendment was made about 4 months after the close of pleadings and therefore required the Respondents to seek the leave of the court to do so.

9. In the circumstances of this case it is the finding of the court that the amended Originating summons was filed without the leave of the court. It is struck out with costs to the Applicant.

10. It is so ordered.

**DATED, SIGNED & DELIVERED AT MURANGA THIS 29<sup>TH</sup> DAY OF JULY 2021.**

**J. G. KEMEI**

**JUDGE**

Delivered in open Court in the presence of;

1<sup>st</sup> – 5<sup>th</sup> Plaintiffs/Respondents - Absent

Defendant/Applicant – Absent

Kuiyaki/Alex, Court Assistants