



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT NAIROBI**

**ELC CASE NO. 45 OF 2019**

**DHAMINI LIMITED.....PLAINTIFF**

**VERSUS**

**TANAD TRANSPORTERS LTD.....1ST DEFENDANT**

**MUSA HASAN.....2ND DEFENDANT**

**RULING**

1. The Plaintiffs filed a Notice of Motion dated 25<sup>th</sup> November 2020 through which they sought the court's leave to amend their pleadings, list of witnesses and list of documents which they attached to the application. The application is based on the grounds on face of the application and a supporting affidavit dated 17<sup>th</sup> December 2020, sworn by Baraza Alex Tabulo, the Director of the Plaintiff's company. He deponed that the Defendants had during the pendency of this suit fraudulently changed the subject matter from **L.R 36/IV** to **L.R 36/IV/107** and had obtained a grant for the same. He also averred that after this change, the Defendants were party to another suit over this property which they lost, *Laiser Communications Ltd vs Tanad Transporters Ltd & 4 others [2010] eKLR*. He also stated that if the Plaintiff and List of witnesses are not amended, the court would not reach a just finding, occasioning great loss to the Plaintiff.

2. On 14.6.2021. the respondents were granted 14 days within which to file and serve their response to the application. However, no response was ever filed. As such, the application stands as unopposed.

3. The issue for determination is whether the plaintiff may amend their pleadings after pleadings are closed. Under **Order 8 Rule 3(2)** of the **Civil Procedure Rules 2010**, the court has the discretion to allow or deny an application to amend, based on the circumstances of each suit.

4. In *Ochieng & Others v First National Bank of Chicago Civil Appeal No. 147 of 1991* (unreported) as cited with approval in *St Patrick's Hill School Ltd v Bank of Africa Kenya Ltd [2018] eKLR* the Court of Appeal set out the principles governing the amendment of pleadings as follows:-

*a) The power of the court to allow amendments is intended to determine the true substantive merits of the case.*

*b) The amendments should be timeously applied for;*

*c) Power to amend can be exercised by the court at any stage of the proceedings.*

*d) That as a general rule however late the amendment is sought to be made it should be allowed if made in good faith provided costs can compensate the other side.*

*e) The plaintiff will not be allowed to reframe his case or his claim if by an amendment of the pleadings the defendant would be deprived of his right to rely on Limitations Act subject however to powers of the court to still allow an amendment notwithstanding the expiry of current period of limitation."*

5. In addition, the Court of Appeal in *Central Kenya Ltd v Trust Bank Ltd [2000] EALR 365* held that: -

*"The guiding principle in applications to amend pleadings is that the same will be liberally and freely permitted, unless prejudice and injustice will be occasioned to the opposite party. There will normally be no justice if the other party can be compensated by an appropriate award of costs for any expense, delay or bother occasioned to him."*

6. In the present case, the plaintiff seeks to amend the plaint on the grounds that the Defendant had fraudulently changed the subject matter and had obtained a grant to that effect during the pendency of the suit.

7. The application has been made early in the suit, as the matter is yet to be set for hearing. The Plaintiff has also approached the court in good faith, with the goal of aiding the court to determine the true substantive merits of the case. The Defendants are yet to file their defense, thus an amendment to the plaint would cause no expense, delay or prejudice against them. Consequently, I do find that the application dated 25.11.2020 is merited. The same is allowed with no orders as to costs.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 6TH DAY OF OCTOBER, 2021 THROUGH MICROSOFT TEAMS.**

**LUCY N. MBUGUA**

**JUDGE**

**In the presence of:-**

M/s Omuya holding brief for Mr. Olando for the Plaintiff

Mr. Wanjohi for the Defendant

Court Assistant: Edel Barasa