



**REPUBLIC OF KENYA**

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

**ELC NO. 126 OF 2018**

**DIOCESE OF ELDORET TRUSTEES (REGISTERED)**

**OUR LADY OF PEACE CATHOLIC MISSION.....PLAINTIFF**

**VERSUS**

**KENYA POWER & LIGHTING COMPANY.....DEFENDANT**

**RULING**

1. This is a ruling in respect of a Notice of Motion dated 5<sup>th</sup> November, 2019 in which the Defendant/Applicant seeks the following orders:-

1) Spent

2) THAT the DISTRICT LAND REGISTRAR OF NANDI HILLS COUNTY and the ATTORNEY GENERAL be enjoined to these proceedings as 2<sup>nd</sup> and 3<sup>rd</sup> defendants respectively.

3) THAT the Defendant/Applicant be granted leave to amend its defence and introduce a counter - claim in terms of the annexed draft amended defence.

4) THAT the costs of this application be in the cause.

2. This suit was filed in 2018 and parties were set to have it heard. When the Plaintiff/Respondent served a further list of documents, it became necessary to seek to join the County Government of Nandi and the Attorney General. The bone of contention is plot known as plot No.013 which had been allotted to the Applicant sometimes on 30<sup>th</sup> July, 1986 for construction of residential houses for its staff. It is the Applicant's contention that the allotting authority tried to give her an alternative plot within town but this was rejected by the Applicant.

3. The allotting authority then re-allocated the same plot to the Respondent. It is on this basis that the Applicant seeks to join the two proposed Defendants and amend the defence so that the issues can be effectually and completely be adjudicated.

4. The Respondent opposed the Applicant's application based on a replying affidavit sworn on 9<sup>th</sup> June, 2021. The Respondent contends that it served the plaint upon the Applicant in good time. The Applicant delayed to file defence forcing it to apply for judgment. The Applicant finally served its defence. The Respondent thereafter filed a further list of documents which were served upon the Applicant. The parties appeared before the Judge for pre-trial and the case was listed for hearing.

5. The Respondent contends that come the hearing of the main suit, the present application was filed. The Respondent contends that this application should have been brought in time and that the same is only meant to delay the finalization of this case. The Respondent therefore argues that this application is brought in bad faith.

6. The parties were directed to file written submissions. The Applicant filed submissions on 8<sup>th</sup> July 2021. The Respondent filed submissions on 27<sup>th</sup> July, 2021. I have considered the Applicant's application as well as the opposition to the same by the Respondent. I have also considered the submissions filed by the parties. There are only two issues for determination. The first one is whether the two proposed new defendants should be joined in this suit. The second is whether the Applicant should be granted leave to amend.

7. On the first issue, the main consideration for the court is whether such joinder will assist the court in effectually and completely adjudicating the dispute in controversy. In the instant case, the Applicant contends that it was allotted the suit property which was later allotted to the Respondent. If this be the case, then for proper determination of the dispute, it is necessary to join the two new Defendants in these proceedings.

8. As regards the second issue, the law is clear that amendments which are sought at the early stages of a case ought to be freely given as long as there is no prejudice to be suffered by the other party which will be incapable of being compensated in costs. In the case of **Central Kenya Ltd -vs- Trust Bank Ltd & 5 others [2000] eKLR**, the court held as follows:-

*“The overriding consideration in applications for such 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 is likely to prejudice the opposite party beyond monetary compensation in costs. The policy of the law is that amendments to pleadings are to be freely allowed unless by allowing them the opposite side would be prejudiced or suffer injustice which cannot properly be compensated for in costs,*

9. In the instant case, the application for amendment was made promptly. It appears that the Respondent is the cause of the delay in finalizing the same as the replying affidavit was filed almost two years later though the court is cognizant of the fact that this may have been due to the Covid-19 Pandemic. However, be that as it may, it is clear that there will be no prejudice suffered by the Respondent. I therefore find that this application has merits. The same is allowed in its entirety. The amended defence and counter-claim shall be filed within 14 days from today.

*It is so ordered*

**DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 11TH NOVEMBER, 2021**

**E.O. OBAGA**

**JUDGE**

In the virtual presence of;

M/S. Ngesa for Defendant/Applicant

Court Assistant – Mercy

**E.O. OBAGA**

**JUDGE**