



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 46 OF 2013

AFRICA INLAND CHURCH KENYA (TRUSTEES REGISTERED)....PLAINTIFF

VERSUS

NAOMI ENYANG.....1ST DEFENDANT

AMIN ALI MOHAMED.....2ND DEFENDANT

RULING

1. The application dated **26/11/2019** and filed in court on **27/11/2019** has been brought by the plaintiff. It seeks the following orders:
 - (a) That this court be pleased to set aside its order of **30/7/2019** striking out the applicant/plaintiff's amended plaint dated **25/7/2019**.
 - (b) That this court upon setting aside the striking out order (a) above do grant leave for the extension of time and deem the amended plaint dated **25/7/2019** duly filed and served.
 - (c) Costs of this application be proved for.
2. The applicant has brought the application pursuant to **Section 1A, 1B, 3 and 3A of the Civil Procedure Act, Article 159 of the Constitution, Order 50 Rule 6, of the Civil Procedure Rules 2010**.
3. The grounds upon which the application is premised are that that this court granted the applicant's notice of motion dated **27/3/2019** and gave the applicant **14 days** to file and serve an amended plaint; that due to pressure of work counsel was only able to file the amended plaint on **30/7/2019** without seeking an order for validation; that for the court to arrive at a just decision it's imperative to have the County Government of Turkana whose predecessor had been paid of Kshs.2,000,000/= as consideration for the land to be made a 3rd defendant; that the plaintiff is keen on prosecuting its suit and should not suffer due to the mistake of counsel; that this court has a wide discretion to grant this application as the same wont prejudice any of the parties herein and that justice of the case requires inclusion of Turkana County Government as a 3rd defendant.
4. The application is supported by an affidavit of the plaintiff's counsel dated **26/11/2019**.
5. The 2nd defendant filed replying affidavit on **13/12/2019**. In that affidavit the deponent narrate the history of the matter in so far as the joinder to the County Government of Turkana is concern and level allegations of default on the part of the applicant and maintains that the applicant never showed any seriousness regarding compliance with the orders of joinder and amendment. He points out that it took the applicant's four months after the striking out of the irregularly amended plaint to file the instant application and that that delay has not been satisfactorily explained. He expresses his apprehension that the application is meant to delay the hearing and determination of the main suit and it should be dismissed with costs.
6. The plaintiff filed its submissions on **3/2/2020**. The 2nd defendant relied on his replying affidavit. I have considered the application and the response including the filed submissions.
7. I have read the supporting affidavit of Jeremiah Ongeri Samba annexed to the application and I find the grounds set out therein to be plausible. I therefore grant this application as prayed in prayers Nos. (a) and (b). The applicant shall bear the costs of the application.

Dated, signed and delivered at Kitale on this 27th day of February, 2020.

MWANGI NJOROGE

JUDGE

27/2/2020

Coram:

Before - Mwangi Njoroge, Judge

Court Assistant - Picoty

Mr. Barongo for 2nd defendant

Ms. Temba holding brief for Samba for plaintiff

COURT

Ruling read in open court.

MWANGI NJOROGE

JUDGE

27/2/2020