



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC SUIT NO. 1281 OF 2013

PARAMOUNT ELECTRONICS LIMITED.....PLAINTIFF

VERSUS

SIMON GATEMBU MUGAA.....1ST DEFENDANT

MOHAMED IBRAHIM GULED

t/a RASMA RESTAURANT.....2ND DEFENDANT

RULING

1. This is the notice of motion dated 19th September 2019 brought under order 8 rules 3, 5 and 8 of the Civil Procedure Rules, Section 1A, 1B and 3A of the Civil procedure Act and all the enabling provisions of the law.

2. It seeks orders:-

1. That leave be granted to the plaintiff to amend the plaint in terms of the annexed proposed Amended Plaint.

2. That the proposed Amended Plaint annexed hereto be deemed to be duly filed and swerved upon payment of the requisite court fees.

3. That costs of this application be provided for.

3. The grounds are on the face of the application and are:-

(a) Due to passage of time since the filing of this suit the circumstances have changed necessitating the plaint to be adjusted accordingly.

(b) The proposed amendments are intended to adjust the plaint and thus enable the plaintiff to put its case forward more effectively.

(c) The proposed amendments are necessary and will assist the court to completely determine and settle all the questions in controversy between the parties.

(d) It is the interest of justice that the plaintiff be allowed to make the proposed amendments and enjoin the proposal parties.

4. The application is supported by the affidavit of Moez Sherali Haji, director of the plaintiff, sworn on the 19th September 2019.

5. The application is opposed. There is a replying affidavit sworn by Simon Gatembu Mugaa, the 1st defendant/respondent herein, sworn on the 18th December 2019.

6. I have considered the notice of motion, the affidavit in support and the annexures. I have also considered the replying affidavit. The issue for determination is whether this application is merited.

7. **Order 8 rule 3(1)** of the Civil Procedure Rules provides that:-

“1. Subject to Order 1, rules 9 and 10, Order 24, rules 3, 4, 5 and 6 and the following provisions of this rule, the court may at any stage of the proceedings, on such terms as to costs or otherwise as may be just and in such manner as it may direct, allow any party to amend his pleadings”.

8. Order 8 rule 5(1) of the Civil Procedure Rules provides that:-

“(1) For the purpose of determining the real question in controversy between the parties, or of correcting any defect or error in any proceedings, the court may either of its own motion or on the application of any party order any document to be amended in such manner as it directs and on such terms as to costs or otherwise as are just.”

9. I have considered the grounds advanced by the plaintiff/applicant and find that they are plausible. The 1st defendant/respondent has not demonstrated that he will be prejudiced in any way by these amendments. I find that it is in the interest of justice that I allow the application.

10. I find merit in this application and grant the orders sought namely:-

(a) That the plaintiff is hereby granted leave to amend the plaint as per the amended draft.

(b) That the draft amended plaint be deemed to be duly filed upon payment of the requisite fees to be done within fourteen (14) days.

(c) That the defendants do have corresponding leave to amend their pleadings if need be within twenty one (21) days upon service.

(d) That costs of the application be borne by the plaintiff.

It is so ordered.

Dated, signed and delivered in Nairobi on this 21ST day of MAY 2020.

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L. KOMINGOI

JUDGE

In the presence of:-

Mr. Wanjohi for the Plaintiff

No appearance for the Defendants

Kajuju - Court Assistant