



**REPUBLIC OF KENYA**

**ENVIRONMENT AND LAND COURT**

**AT MOMBASA**

**ELC NO. 91 OF 2018**

**(FORMERLY MOMBASA HCCC NO. 211 OF 2012)**

**DAVIS MWALIMO MWANGKA.....PLAINTIFF**

**VERSUS**

**KENYA PORTS AUTHORITY.....1<sup>ST</sup> DEFENDANT**

**CEMTEC ENGINEERING LIMITED.....2<sup>ND</sup> DEFENDANT**

**RULING**

*(Application for amendment of plaint; plaintiff in his original suit seeking orders to have the defendants restrained from interfering with his possession of a canteen; plaintiff now seeking to amend the plaint on the claim that the defendants evicted him and caused damage to his goods; plaintiff wishing to add a claim for special and general damages arising from the alleged eviction; application allowed)*

1. The application before me is that dated 21 October 2019 filed by the plaintiff. It is an application seeking leave to amend the plaint. When the application came up for hearing inter partes on 19 May 2020, Ms. Mulongo, learned counsel for the 2<sup>nd</sup> defendant, indicated that she was not opposing the application. Mr. Kyandi, learned counsel for the 1<sup>st</sup> defendant, submitted that he would wish to oppose the application and sought for more time to file a reply to the same. I was not persuaded to adjourn, or give more time to the 2<sup>nd</sup> defendant to file a reply, for in my view, there had been sufficient time to respond from the time that the application was filed and served. There is therefore no material before me that substantially opposes the application. I will nonetheless need to be satisfied that it is justiciable to exercise my discretion to allow the plaintiff to amend the plaint.

2. To put matters into context, this suit was commenced through a plaint which was filed on 26 November 2012. The applicant pleaded that he has been carrying out business on the Plot No. 971/972 MN Shimanzi Road, known as the Port Police Canteen. He claimed to have been carrying out business since the year 1989 pursuant to an agreement entered into between himself and the OCPD Port Police, to provide canteen services to members of staff of the port police. He claimed that he had been paying a monthly sum to the Provincial Police Office and was fully paid up. He pleaded that he was not a tenant of the 1<sup>st</sup> defendant. He averred that on 21 November 2012, the 1<sup>st</sup> defendant demanded that he vacates the suit premises. He contended that the 1<sup>st</sup> defendant had no business interfering with his possession of the suit property and sought prayers for a permanent injunction against the 1<sup>st</sup> defendant. The 2<sup>nd</sup> defendant was sued because it was claimed that the 2<sup>nd</sup> defendant has been contracted to carry out renovations on the suit premises. Together with the plaint, the plaintiff filed an application for injunction. Interim orders were issued on 26 November 2012. The applicant later filed an application claiming a disobedience of the said orders. The result is not important, but that contention, that the respondents damaged the suit premises, is the basis of this application for amendment.

3. The applicant avers that owing to the acts of the respondents, he was evicted from the suit premises, and he suffered loss of goods and loss of business. He now wishes to make a claim for damages. He has annexed a copy of the draft amended plaint which I have gone through. The applicant wishes to make an additional claim for special damages in the sum of KShs. 287,842,524.00/= , and general damages for wrongful eviction.

4. I note that this case has not yet begun. I see no prejudice that the defendants will suffer if I allow the amendments sought by the applicant. The defendants will have a chance to amend their defences to oppose the pleadings in the amended plaint.

5. For the above reasons, I allow the application and make the following orders :-

*(i) That the plaintiff is hereby granted leave to amend the plaint in line with the annexed draft amended plaint.*

*(ii) That the plaintiff should proceed to formally file the amended plaintiff within 30 days of the date hereof and the amended plaintiff should be accompanied by any further list of documents and/or statements in support of the amended plaintiff. In default of so filing the amended plaintiff as directed, the leave granted in (i) above will lapse and the plaintiff will have to proceed based on the original plaintiff.*

*(iii) That if filed, the amended plaintiff be served within 7 days of filing and service can be effected by way of email.*

*(iv) That upon service, the defendants have leave to amend their defence and may file their amended defences within 30 days of service, again accompanied by any further statements and/or documents.*

6. The costs of this application will be costs in the cause since it is the position of the applicant that the amendments were necessitated by the subsequent actions of the defendants after filing the suit.

7. Orders accordingly.

DATED THIS 10TH DAY OF JUNE, 2020

**JUSTICE MUNYAO SILA**

**JUDGE, ENVIRONMENT AND LAND COURT**

**AT MOMBASA.**