



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT BUNGOMA
MISC. CIVIL APPLICATION No.242 OF 2000

EUPHAMIA N. MAKOKHA.....APPLICANT

VERSUS

THE CHAIRMAN BUMULA LAND DISPUTES TRIBUNAL.....RESPONDENT

AND

FELISTAS ANDATI ODERA.....INTERESTED PARTY

RULING

[1] Before me is an application for leave to amend the notice of motion dated 3rd November, 2000. The grounds supporting the same is that it has come to the applicant's Counsel's attention that the supporting affidavit and statement of fact all have errors as regard to the form of proceedings and heading. That it will be fair and proper for the administration of Justice if the errors noted be corrected by way of amendment. That there will be no prejudice to the respondents.

The application is supported by the affidavit of Charles Keago Areba the learned Counsel for the applicant herein. In his application, he reiterates the same facts. He attached an amended Notice of motion showing the intended amendments.

[2] The respondent opposed the application. He relied on the application of Felistus Andati Odera. The affidavit in a nut shell says that the applicant wants to take his land which was awarded to him by Bumula Land Disputes Tribunal and the Kakamega Provincial Appeals Committee on merit. He argues that failure to enjoin the Republic is fatal and it renders the application bad in law and defective and that the application was filed 15 years ago and the applicant failed to prosecute it.

[3] It is now settled that the overriding consideration on applications for leave to amend is whether the amendments sought are necessary for the just determination of the controversies between the parties. The policy of the law being that amendment to pleadings sought before the hearing, should be freely allowed if they can be made without injustice to the other party. See *Eastern Bakery Vs Castelino [1958] 64I*

[4] Granting of leave or refusal of the same is discretionary.

Section (3) (d) of the Constitution provides as follows;

“The Court, while observing the rules of natural

*justice shall not be unreasonably restricted by
procedural technicalities”.*

Equally Order 51 rule 10(2) of the Civil Procedure Rules 2010 stipulates that:-

*“No application shall be defeated on a technicality or
want of forum therefore does not affect the subsistence
of the application”*

[5] As far as I can see, no prejudice will be suffered by the respondent in having this amendment done. The other issues of concern to the respondent can be canvassed during the hearing of the application hereof

The application is allowed.

Costs of the same are awarded to the respondent.

It is so ordered.

DATED at BUNGOMA this 2nd day of December, 2015

S.N. MUKUNYA

JUDGE