



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MALINDI**

**SUCCESSION CAUSE 225 OF 2011**

**CHRISTINE MWENDE**

**ANITA A. PAMBA.....PLAINTIFFS**

**VERSUS**

**NICHOLAS KOPY KATANA KARISA  
BARAKA MOHAMED  
HAMIS ORE  
KAZUNGU MASHI  
KAZUNGU WANJE  
PETER CHARO  
KATANA MASHAKA  
MWAMULAMBA MAKIRANDA  
SANDAE ZIRO  
KITI J. JEW A**

**MAMA RITA.....DEFENDANTS**

**RULING**

1. The plaintiffs’ Notice of Motion seeking leave to amend the plaint and brought inter alia under Order 8 rule 3 of the Civil Procedure rules met opposition from the defendants who contend that the same is an afterthought intended to delay the determination of the suit.
2. I have looked at the affidavits filed in respect of the application and the respective submissions and pleadings. It is apparent that there is a serious contention between the parties as to whether the plot No. KILIFI/MTWAPA/1528 to which the plaintiff's lay claim is distinct from or part of KILIFI/MTWAPA/206 claimed by the defendant. That issue is the main thrust of the plaintiff’s intended amendment. The failure by the plaintiff to include these details in the original plaint has been explained in the affidavit of the 1<sup>st</sup> plaintiff. In my considered view no potential prejudice has been demonstrated by the defendant that is incapable of compensation by costs.
3. On that basis, the provisions of Order 8 rule 3 of the Civil Procedure Rules and relevant case law which appears to be in the applicant’s favor, there can be no justification for denying the amendment. This view is fortified by the **Court of Appeal decision in Central Kenya Ltd –vs- Trust Bank Ltd and others Civil Appeal No. 222 of 1998**. The court stated therein that:

***“It is also trite law, that as far as possible, a litigant should plead the whole of the claim which he is entitled to make in respect of his cause of action...otherwise, the court will not later permit him to reopen the same subject of litigation ...because they have from negligence, inadvertence of accident***

*omitted that part of their case. Amendment of pleadings and joinder of parties is meant to obviate this. Hence the guiding principle in applications for leave to amend is that all amendments should be freely allowed at any stage of the proceedings, provided the amendment or joinders will not result in prejudice or injustice to the other party, which cannot properly be compensated. Neither the length of the proposed amendments nor delay were sufficient grounds for declining leave to amend. The overriding considerations were whether the amendments were necessary for the determination of the suit and whether the delay was likely to prejudice the opposing party beyond compensation in costs.”*

4. Clearly the intended amendment is necessary for the determination of the suit. The court is also alive to its obligation under Section 1A and B of the Civil Procedure Act to give effect to the overriding objective of the Act and Civil Procedure Rules, namely to facilitate the just, expeditious, proportionate and affordable resolution civil disputes. The application for amendment will be allowed with costs to the defendants.

**Read, delivered and dated at Malindi this 7<sup>th</sup> day of September, 2012 in the absence of the parties.**

**C. W. Meoli**  
**JUDGE**

Court clerk- Leah, Evans