

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

ELC CASE NO. 104 OF 1994 (O.S)

M' IMATHIU M'RUGIRI.....PLAINTIFF

VERSUS

M'MUTUNGI MUCHEKE.....DEFENDANT

RULING

At the hearing of this case, the parties agreed by consent to first dispose of the Preliminary Objection raised through a Notice dated 31st May 2012 and filed the same date. The said Notice of Preliminary Objection stated as follows:

“1. The purported amended Originating Summons offends the mandatory provisions of Order 8 Rule 6 of the Civil Procedure Rules (formerly Order VIA Rule 6 of the repealed rules)”.

In his written submissions dated 27th November 2018 and filed the same date, M/S Mwenda Mwarania, Akwalu & Co. Advocates for the defendant argued that by a ruling dated 4th June 2010, the plaintiff was granted leave to amend, file and serve his Originating Summons as per the draft annexed to the Chamber Summons dated 27th April 2007 within 14 days from the date of the ruling. Instead of complying with the directions of the Court, the plaintiff went to sleep only to wake up almost 2 years later on 16th February 2012 to file an amended Originating Summons without leave of Court or extension of the compliance period. The defendant also argued that the plaintiff further deviated from the contents of the draft amended Originating Summons by adding two (2) strangers as co-defendants. M/S Mwenda Mwarani, Akwalu & Co. Advocates submitted that by dint of **Order 8 Rule 6 CPR**, the leave to amend granted on 4th June 2010 ceased to have effect by operation of law and that the purported amendment filed on 16th February 2012 was without leave and was therefore null and void.

Though the plaintiff was granted leave to file and serve his submissions pursuant to the directions given on 26th November 2018, the plaintiff failed to comply with these directions.

I have considered the submissions by the firm of Mwenda Mwarani, Akwalu & Co. Advocates and the applicable law. In a ruling dated 4th June 2010, **Hon. Lady Justice Mary Kasango** (as she then was) while allowing an application for amendment in this case held as follows:

“1. The plaintiff is granted leave to amend, file and serve his Originating Summons as per the draft amended to the Chamber Summons dated 27th April 2007 within 14 days from this date hereof”.

This Court granted the plaintiff leave to amend, file and serve his Originating Summons in accordance with the draft annexed to the application for amendment dated 27th April 2007 within 14 days. **Order 8 Rule 6 of the Civil Procedure Rules 2010** provides as follows:

“Where the Court has made an order giving any party leave to amend, unless that party amends within the period specified or, if no period is specified, within fourteen (14) days, the order shall cease to have effect, without prejudice to the power of the Court to extend the period”.

When the plaintiff failed to amend, file and serve his Originating Summons in terms of the draft amended Originating Summons as directed by the Court within 14 days from 4th June 2007, the order ceased to have effect. The purported amendment and filing by the plaintiff of his Originating Summons on 16th February 2012 had no force of law and the same is a nullity. In the result, I find that the Notice of Preliminary Objection dated 31st May 2012 is merited and the same is upheld.

Consequently, the amended Originating Summons filed in Court on 16th February 2012 is hereby struck out with costs to the defendant.

READ and SIGNED at Meru in open Court this 28th day of February, 2019.

E. CHERONO

ELC JUDGE

In the presence of:

1. Muriira for defendant

2. Kananu C/A