



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT ELDORET**

**E & L NO. 346 OF 2016 (O.S.)**

**JEREMIAH KIPTUM KIMAIYO.....1<sup>ST</sup> PLAINTIFF**

**STANLAUS MUTAI.....2<sup>ND</sup> PLAINTIFF**

**VERSUS**

**RAI PLYWOODS (K) LTD.....DEFENDANT**

**RULING**

The application before court is dated 22.10.2018 filed by the firm of Terer Kibii & Company Advocates. The applicants seek orders that that they be granted leave to amend the originating summons and that the annexed amended originating summons be deemed as properly filed. Moreover, that all the pleadings and affidavits be amended to the effect that the name of the 1<sup>st</sup> plaintiff reads Joseph Kiptum Kimaiyo. Lastly, that the costs of this application be in the cause.

The application is based on grounds that this suit arose from a right of adverse possession by the plaintiffs over land parcel Number Eldoret Municipality Block 14/1165. That the applicant's counsel inadvertently indicated the 1<sup>st</sup> plaintiff's name as Jeremiah Kiptum Kimaiyo instead of Joseph Kiptum Kimaiyo. That the plaintiff/applicant now seeks to amend the originating summons so as to bring before this honourable court the correct name of the 1<sup>st</sup> plaintiff and or information which is necessary for the effectual and complete adjudication of the real questions in controversy on their true and substantial merit. The amendment will not occasion any prejudice to the defendant/respondent and it is therefore in the interest of justice that the plaintiff/applicants be granted leave to amend their originating summons annexed herein.

The application is supported by the affidavit of Silas Kibii who states that this suit arose from a right of adverse possession by the plaintiffs over land parcel Number Eldoret Municipality Block 14/1165. He inadvertently indicated the name of the 1<sup>st</sup> plaintiff as Jeremiah Kiptum Kimaiyo instead of Joseph Kiptum Kimaiyo and now seeks to amend the originating summons so as to bring before this honourable court eh correct name of the 1<sup>st</sup> plaintiff and or information which is necessary for the effectual and complete adjudication of the real questions in controversy on their true and substantial merit.

The amendment will not occasion any prejudice to the defendant/respondent. That at the time of drafting the pleadings herein, they erroneously captured the name of the 1<sup>st</sup> plaintiff as Jeremiah Kiptum Kimaiyo instead of Joseph Kiptum Kimaiyo.

That the mistake of the advocate should not be visited upon an innocent litigant.

That it is therefore, in the interest of justice that the plaintiff/applicants be granted leave to amend their originating summons filed herein.

The respondent filed a replying affidavit stating that the firm of M/s Terer Kibii and Company Advocates is not on record in this matter hence the application dated 22<sup>nd</sup> October, 2018 should be struck out. That there is no Notice of Change of Advocates filed by the said firm of M/s Terer Kibii and Company Advocates hence they do not have capacity to file pleadings in this matter.

That he is informed by his advocate on record, which information he verily believes to be true that originating summons under Section 38 of the Limitation of Actions Act cannot be amended and if amended, the cause of action arises on the date of amendment hence it ought to fail. That the supporting affidavit attached to the originating summons dated 21<sup>st</sup> November, 2016 is sworn by one Jeremiah Kiptum Kimaiyo and not his advocate one Silas Kibii who has sworn the supporting affidavit and who now seeks to amend the pleadings. That the affidavit in support of the current application should have been sworn by the party himself.

I have considered the application before court and do find that the same is untenable as it is filed by a stranger who is not on record.

The firm of Terer Kibii is not on record and therefore, has no capacity to file the application. The firm on record is Terer & Company Advocates. The application before court is incompetent and the same is dismissed with costs. Orders accordingly.

**Dated and delivered at Eldoret this 8<sup>th</sup> day of February, 2019.**

**A. OMBWAYO**

**JUDGE**