



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MOMBASA

LAND CASE NO. 171 OF 2015

KIHUBA HOLDING LIMITED.....PLAINTIFF

-VERSUS-

CHARO KARISA NGULU.....DEFENDANT

RULING

1. The plaintiff/applicant vide an application dated 8th May 2018 and brought under the provisions of Order 8 Rule 3 of the Civil Procedure Rules and Section 3A and 100 of the Civil Procedure Act prays for orders:

a) That leave be granted to the plaintiff to amend the plaint and the same be deemed as duly filed upon payment of Court fees.

b) Costs of the application be in the cause.

2. The application is premised on the grounds that there is need to correct and set the particulars of prayers. Secondly that the amendment will not cause any prejudice to the defendant.

3. In opposing the application, the defendant deposed that the application amounts to abuse of Court process and will cause him injustice as he will not be able to tender evidence in regard to the prayers added. The defendant also avers that the application shall further delay the matter. He urged the Court to disallow the request for amendment.

4. The parties filed written submissions where both referred to the case of **Central Kenya Ltd vs Trust Bank Ltd (2000) EALR 365** in which it was held that, *“a party would be allowed to make amendments as are necessary for determining the real issues in controversy or avoiding multiplicity of suits provided there is no undue delay or no new matter and the amendment will not cause injustice to the other side. Accordingly amendments can be allowed freely at any stage of the proceedings provided it does not result in prejudice or injustice to the other party.”*

5. The evidence had already been taken and parties have filed their closing submissions. The case was now at the stage for the Court to give a judgment date when this application was introduced. The amendment sought to be introduced is contained in the prayers. Prayer (b) of the plaint is worded thus:

“A declaration that the plaintiff is a bonafide purchaser entitled to complete the transaction and enjoy quiet possession of the plot now known as MSA/Mwembelegeza/1670. The proposed amendments is:

(bb) “A declaration that the plaintiff is entitled to specific performance of the sale agreement dated 29.1.2014 in respect of plot No MSA/Mwembelegeza/1670.

(c) In the alternative an award of general damages and a refund of the deposit paid.

(e) Any other remedy the honourable Court may deem just to grant.

6. In comparing prayer (b) as pleaded and the proposed new prayer, I find no change introduced other than clarity in the grammatical expression. The plaintiff had prayed for completion of the transaction which in my view means the same thing as an order for specific performance. Secondly the prayer for general damages and or refund can easily be determined based on the evidence that is already on record. However if the defendant wishes to adduce further evidence against such a prayer nothing bars him from doing so since judgment is

yet to be written.

7. In my considered view, I do not see how the intended amendments will cause injustice or prejudice to the defendant. The defendant having appreciated the provisions of section 100 of the Civil Procedure Act and the holding in the case of Central Kenya Ltd *supra* he ought not to have opposed the application if he wanted this matter to be concluded fast. Therefore I find the application is merited and hereby grant the application as prayed. The costs are ordered in the cause.

Dated, signed & delivered at Mombasa this 7th March 2019

A. OMOLLO

JUDGE