



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA AT EMBU**

**E.L.C. CASE NO. 23 OF 2014**

**(FORMERLY KERUGOYA ELC NO. 350 OF 2013)**

VICTOR LEO NJUKI.....1<sup>ST</sup> PLAINTIFF  
ESBON NGANGA WAMBUGU.....2<sup>ND</sup> PLAINTIFF  
NGAI KAREIYU.....3<sup>RD</sup> PLAINTIFF  
IRERI RUMINJO.....4<sup>TH</sup> PLAINTIFF

**VERSUS**

ALICE NJUKI MUKONO (suing as the legal Representative  
of NJUKI MUKONO (Deceased)).....1<sup>ST</sup> DEFENDANT  
JOHN NJAGI KIRANGI.....2<sup>ND</sup> DEFENDANT  
GATERI MACHANGA.....3<sup>RD</sup> DEFENDANT  
LAWRENCE NJIRU KIRANGI.....4<sup>TH</sup> DEFENDANT  
JOHN NGARI MBANDA.....5<sup>TH</sup> DEFENDANT  
JULIUS IRERI NJUKI.....6<sup>TH</sup> DEFENDANT  
JAMES NJUE NTHIGA.....7<sup>TH</sup> DEFENDANT  
DAVID NJERU KIURA.....8<sup>TH</sup> DEFENDANT  
JAMLICK KITHU GITITI.....9<sup>TH</sup> DEFENDANT  
JOHN KARIUKI NJUKI.....10<sup>TH</sup> DEFENDANT  
WILLIAM MACHAKI GICHONI.....11<sup>TH</sup> DEFENDANT  
GIDEON GITONGA IRERI.....12<sup>TH</sup> DEFENDANT

**RULING**

1. By a Notice of Motion dated 27<sup>th</sup> November 2018 brought under **Order 1 Rule 3 and Order 8 Rules 3 & 5 of the Civil Procedure Rules, 2010** (hereinafter *the Rules*) the Plaintiffs sought leave of court to join one additional Plaintiff and several new Defendants.

2. The said application was based upon the several grounds set out on the face of the notice of motion. It was contended that some of the original suit properties had been subdivided and transferred to third parties during the pendency of the suit. It was further contended that it

was thus necessary to amend the plaint to facilitate a just, fair and conclusive determination of all the issues in controversy once for all.

3. The application was supported by the affidavit of the 1<sup>st</sup> Plaintiff who swore it on his own behalf and on behalf of his co-plaintiffs. The said affidavit reiterated and expounded upon the grounds set out in the notice of motion. The Plaintiffs, therefore, urged the court to allow the said application.

4. The 6<sup>th</sup> Defendant filed a replying affidavit sworn on 25<sup>th</sup> January 2019 in opposition to the said application on two main grounds. First, it was contended that some of the parties to the suit were deceased and had not been substituted with their legal representatives. Those parties were, however, not identified in the affidavit. Second, it was contended that joining so many parties in one suit may complicate the issues for determination and delay conclusion of the suit hence the Plaintiffs should file separate suits.

5. When the said application was listed for hearing on 11<sup>th</sup> February 2019 the Plaintiffs' advocate relied entirely upon the Plaintiffs' written submissions dated 18<sup>th</sup> January 2019 and filed on 21<sup>st</sup> January 2019. The Defendants' advocate, on the other hand, opposed the application on the basis of the 6<sup>th</sup> Defendant's aforesaid replying affidavit. No new or additional grounds were raised by the parties.

6. The court has considered the Plaintiffs' said application, the replying affidavit in opposition thereto as well as the respective submissions of the parties. The principles to be considered in granting or refusing an application for leave to amend a pleading were restated in the case of **Eastern Bakery Vs Castellino [1958] EA 461 at page 462** as follows:-

**“It will be sufficient, for purposes of the present case, to say that amendments to pleadings sought before the hearing should be freely allowed, if they can be made without injustice to the other side, and that there is no injustice if the other side can be compensated by costs...”**

7. Similarly, in the case of **Central Kenya Ltd Vs Trust Bank Ltd & 5 Others [2000] eKLR**, the Court of Appeal pronounced the following principles;

**“...the overriding consideration in applications for such leave is whether the amendments are necessary for the just determination of the controversy between the parties. Likewise, mere delay is not a ground for declining to grant leave. It must be such delay as is likely to prejudice the opposite party beyond compensation in costs. The policy of the law is that amendments to pleadings are to be freely allowed unless by allowing them the opposite party would be prejudiced or suffer injustice which cannot properly be compensated for in costs.”**

8. The court has also considered the provisions of **Order 1 Rule 3 and Order 8 rule 3 of the Rules** on joinder of parties and amendment of pleadings. The court is satisfied that it would be just to allow the amendments sought for the purpose of conclusively determining the real issues in controversy amongst all the concerned persons. The policy of the law is to avoid multiplicity of suits in respect of the same cause of action, transaction or series of transactions, where common issues of fact or law may arise.

9. The court is not satisfied that the Defendants have demonstrated any prejudice they may suffer, or any prejudice which cannot be remedied by costs. The allegation that some of the parties are deceased was not proved. Even if it had been proved, such occurrence could not prevent an amendment of pleadings.

10. The court is not satisfied that the Defendants' fears of delay in the conclusion of the suit are well founded. Should the Plaintiffs fail to prosecute their suit expeditiously, the Defendants shall be at liberty to take steps to either fix it for hearing or apply for its dismissal for want of prosecution under **Order 17 of the Rules**.

11. The upshot of the foregoing is that the court finds merit in the Plaintiffs' notice of motion dated 27<sup>th</sup> November 2018 and the same is hereby allowed. Consequently the court makes the following orders thereon;

a) The notice of motion dated 27<sup>th</sup> November 2011 is hereby allowed in terms of orders (a) and (b) thereof.

b) The Plaintiffs shall file the amended plaint within fourteen (14) days from the date hereof and serve it upon all concerned parties and file an affidavit of service.

c) Costs of the application shall be in the cause.

12. Orders accordingly.

**RULING DATED, SIGNED and DELIVERED in open court at EMBU this 30<sup>TH</sup> DAY of MAY, 2019**

**In the presence of Mr. Okwaro for the Plaintiffs and in the absence of the Defendants.**

**Court Assistant Mr. Muinde**

**Y.M. ANGIMA**

**JUDGE**

30.05.19