



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MILIMANI**

**ELC NO. 307 OF 2016**

**PLANET FOODS LIMITED.....1<sup>ST</sup> PLAINTIFF**

**ABDALLA ALI TAIB.....2<sup>ND</sup> PLAINTIFF**

**TAIB ALI TAIB.....3<sup>RD</sup> PLAINTIFF**

**MOHAMED ALI TAIB.....4<sup>TH</sup> PLAINTIFF**

**=VERSUS=**

**JAMES DAVID ABILA.....1<sup>ST</sup> DEFENDANT**

**JAPHETH AWINO AGUMBI.....2<sup>ND</sup> DEFENDANT**

**AMENKHIENAN ONO PETER.....3<sup>RD</sup> DEFENDANT**

**ADEWUMI OLUWAMAYOWA.....4<sup>TH</sup> DEFENDANT**

**BABTUNDE JOSEPH.....5<sup>TH</sup> DEFENDANT**

**MOSES KANIARU KAMAU (All sued in both their personal capacities)**

And also in their capacities as the Trustees and representatives of

**CHRIST THE REDEEMERS MINISTRY.....6<sup>TH</sup> DEFENDANT**

**STEPHEN O AMBANI .....7<sup>TH</sup> DEFENDANT**

**PETER WAMBUGU.....8<sup>TH</sup> DEFENDANT**

**JANE NJERI GICHARA.....9<sup>TH</sup> DEFENDANT**

**DIRECTOR OF SURVEYS.....10<sup>TH</sup> DEFENDANT**

**HONOURABLE ATTORNEY GENERAL.....11<sup>TH</sup> DEFENDANT**

**RULING**

1. The Plaintiffs filed this suit on 1<sup>st</sup> April, 2016 in which they sued the 1<sup>st</sup> to 5<sup>th</sup> Defendants in their individual capacities and as trustees of the 6<sup>th</sup> Defendant. The 1<sup>st</sup> to 6<sup>th</sup> Defendants were then being represented by M/s Gitonga Muriuki & Company Advocates. On 9<sup>th</sup> March 2018, the firm of M/s Mwaure & Mwaure Wahiga filed a notice of change of Advocates taking over the 6<sup>th</sup> Defendant from the firm of M/s Gitonga Muriuki & Company Advocates.

2. On 22<sup>nd</sup> June 2018, the 1<sup>st</sup> to 5<sup>th</sup> Defendants including the 6<sup>th</sup> Defendant filed an application in which they sought leave to amend their defence to bring in the Chief Land Registrar, the Director of Survey and The Attorney General as Defendants and also include a counter claim. The application by the 1<sup>st</sup> to 6<sup>th</sup> Defendants was allowed vide ruling delivered on 27<sup>th</sup> November, 2018. The amended defence and counter-claim were filed on 10<sup>th</sup> December, 2018.

3. On 17<sup>th</sup> May 2019, the 6<sup>th</sup> Defendant/Applicant filed a Notice of Motion in which it sought joinder of the National Land Commission as a Defendant and for leave to amend the defence and counter-claim as per the 1<sup>st</sup> to 5<sup>th</sup> Defendants defence and counter-claim filed in Court on 10<sup>th</sup> December, 2018.

4. The Applicant contends that it is necessary to enjoin the National Land Commission as a Defendant because it is the National Land Commission which requested for sub division of the land which resulted in the suit property from the Director of Survey. The Applicant further contends that it is the National Land Commission which wrote to the Director of Survey confirming that they had no objection to the sub-division.

5. The Applicant states that its officials made up their mind to apply for leave to amend after they listened to the evidence adduced by the Attorney General which evidence indicated that the National Land Commission officials were at the forefront in the process of subdivisions. The Applicant further argues that the joinder of the National Land Commission will enable it ventilate its case.

6. Apart from the Plaintiffs/Respondents, all the other parties indicated that they were not opposed to joinder of the National Land Commission. The Plaintiffs/Respondents opposed the Applicant's application based on grounds of opposition filed in Court on 29<sup>th</sup> May, 2019. The Plaintiffs/Respondents contend that the Applicant's application is frivolous, misconceived and is an abuse of the Court process; that the proposed amended defence is not annexed to the application; that the application is coming too late in the day after the case has started and that the Applicant wants to tailor its case as the proceedings go on.

7. I have considered the Applicant's application as well as the opposition to the same by the Plaintiffs/Respondents. I have also considered the submissions by the parties during the hearing. There are only two issues which emerge for determination. The first is whether leave to amend should be granted and the second is whether the National Land Commission should be enjoined in these proceedings.

8. On the first, issue, the Applicant has not shown what amendments it proposes to make. The Applicant has merely stated that it intends to amend its defence as per the copy of the 1<sup>st</sup> to 5<sup>th</sup> Defendants defence and counter-claim which was filed on 10<sup>th</sup> December, 2018. A look at the defence which was filed on 10<sup>th</sup> December, 2018 shows that it included the 6<sup>th</sup> Defendant which is the Applicant in this case. This being the case and there being no indication as to the proposed amendments, I find that granting leave to amend will not serve any purpose. For all intents and purposes, the 1<sup>st</sup> to 6<sup>th</sup> Defendants are sailing in the same boat. It is only that they are being represented by two different advocates.

9. In as much as amendment to pleadings ought to be granted freely at any stage, the amendments should not prejudice the other party. The hearing of this case had started and evidence of two witnesses had been taken before the 1<sup>st</sup> to 6<sup>th</sup> Defendants applied to amend their defence to include a counter-claim and additional parties. The prayer for amendment was allowed and additional parties were brought on board. The amendments which were effected included the 6<sup>th</sup> Defendant which is the Applicant herein. To allow another amendment when the Applicant is not disclosing the nature of amendment will be prejudicial to the Plaintiffs/Respondents.

10. On the second issue, as to whether the National Land Commission ought to be enjoined, the principles for joinder of a party to the suit as a Defendant are clear. The joinder should be necessary in that the Court cannot pass an effective decree without the party who is sought to be enjoined.

In the instant case, the major player in survey and sub division is the Director of Survey. Though the National Land Commission plays a role like in confirming whether it is opposed to the sub-division or not, the presence of the National Land Commission as a party is not necessary for the Court to pass an effective decree.

11. The Director of Survey has been made a party. The Chief Land Registrar is also a party. If the Applicant wishes to call for any witness from the National Land Commission, that can be done without necessarily making the National Land Commission a party. Considering the nature of the dispute herein, I find that the National Land Commission is not a necessary party.

I therefore find that the Applicant's application cannot be allowed. The same is dismissed with costs to the Plaintiffs/Respondents.

It is so ordered.

**Dated, Signed and delivered at Nairobi on this 27<sup>th</sup> day of June, 2019.**

**E.O.OBAGA**

**JUDGE**

In the presence of Mr. Muriuki for 1<sup>st</sup> to 5<sup>th</sup> Defendants who is also holding brief for Mr. Wahiga for 6<sup>th</sup> Defendant.

Court Assistant Hilda.