



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT NAIROBI**

**ELC CIVIL CASE NO. 238 OF 2010**

**MARGARET WAIRIMU MUCHERU.....1<sup>ST</sup> PLAINTIFF/APPLICANT**

**FLORENCE NJERI MUCHERU.....2<sup>ND</sup> PLAINTIFF/APPLICANT**

**=VERSUS=**

**MANYATTA PARADISE LTD.....1<sup>ST</sup> DEFENDANT/RESPONDENT**

**VERONICA NJERI KAMINJA.....2<sup>ND</sup> DEFENDANT/RESPONDENT**

**AND**

**MUGUMO-INI RESIDENTIAL ASSOCIATION.....INTERESTED PARTY**

**RULING**

1. This is the notice of motion brought under order 8 rule 3 and 7 of the Civil Procedure Rules 2010, Section 1A, 1B and 3A of the Civil Procedure Act, Cap 21 Laws of Kenya and all other enabling provisions of the law.

2. It seeks that:-

- 1. That the plaintiff be granted leave to amend the plaint as per the amended draft.**
- 2. That the draft amended plaint annexed hereto be deemed to be duly filed upon payment of the requisite court fees.**
- 3. That costs of this application be in the cause.**

3. The grounds are on the face of the application and are:-

- a. The plaint dated and filed on 14<sup>th</sup> May 2010 did not capture all the actual owners of the “adjacent property” Land Parcel Number Nairobi Block 72/2425 that is also a subject matter of the suit herein.**
- b. The new information has materially changed the parties to this suit thereby necessitating this application to amend it.**
- c. This honourable court has the power and discretion to grant the orders sought.**

4. The application is supported by the affidavit of Dominic Njuguna Mbigi, advocate of the plaintiff, sworn on the 27<sup>th</sup> February 2018.

5. The application is opposed. There are grounds of opposition filed by the 1<sup>st</sup> defendant dated 9<sup>th</sup> March 2018. There is also a replying affidavit by Joyce Wamuyu Mbau director of the 1<sup>st</sup> defendant sworn on the 24<sup>th</sup> August 2018.

6. On the 19<sup>th</sup> June 2018 the court directed that the application be canvassed by way of written submissions.

7. I have considered the notice of motion and the affidavit in support. I have considered the grounds of opposition, the replying affidavit and the written submissions of counsel. The issue for determination is whether this application is merited.

8. Order 8 rule 3 (1) provides that:-

**“Subject to Order 1, rules 9 and 10, Order 24, rules 3, 4, 5 and 6 and the following provisions of this rule, the court may at any stage of the proceedings, on such terms as to costs or otherwise as may be just and in such manner as it may direct, allow any party to amend his pleadings”.**

9. I have considered the grounds advanced by the counsel for the plaintiffs/applicants and find that they are plausible. I find that it is in the interest of justice that I allow the application.

10. I find merit in the application and grant the orders sought namely:-

- a. That the plaintiff is hereby granted leave to amend the plaint as per the amended draft.**
- b. That the draft amended plaint be deemed to be duly filed upon payment of the requisite fees. To be done so within 14 days.**
- c. The defendant and interested party do have corresponding leave to amend their pleadings if need be within 21 days.**
- d. The costs of the application be borne by the plaintiff.**

It is so ordered.

**Dated, signed and delivered in Nairobi on this 20<sup>TH</sup> day of JUNE 2019.**

.....

**L. KOMINGOI**

**JUDGE**

**In the presence of:-**

.....Advocate for the Plaintiffs

.....Advocate for the Defendants

.....Court Assistant