



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT CHUKA

CHUKA ELC CASE NO. 05 OF 2019

FORMERLY CHUKA C.M'S CIVIL CASE NO. 114 OF 2018

MUGERA KAMOTHO.....PLAINTIFF

VERSUS

JAMES MUCHIRI NDEGWA.....1ST DEFENDANT

DAVID MUTHENGI.....2ND DEFENDANT

JOHN NYAGA.....3RD DEFENDANT

M'IMWITHA M'RINTHIRA.....4TH DEFENDANT

JACKSON MAKUNYI KURURU.....5TH DEFENDANT

M'GWETA MURUA.....6TH DEFENDANT

NJERU NGOROI.....7TH DEFENDANT

ALEXANDER MUNENE MATI.....8TH DEFENDANT

PATRICK MUTUGI MATI.....9TH DEFENDANT

JOHN GITONGA MATI.....10TH DEFENDANT

CATHERINE KAGENDO MUTURIA.....11TH DEFENDANT

M'NANDI MAIKITHE.....12TH DEFENDANT

RULING

1. This application states that it has been brought to court under Article 159(2) of the Constitution of Kenya, Section 3A of the Civil Procedure Act and Order 50 Rule 1, Order 8 rule 3 of the Civil Procedure Rules, 2010, and all other enabling provisions of the law. The application is dated 29th July, 2019.

2. The application seeks the following orders:

- a) That the applicant be granted leave to amend the plaint dated 3rd March, 2015 and as per the attached draft amended plaint.
- b) That the amended plaint annexed hereto be treated as the plaintiff's amended plaint and that the same be deemed as having been duly filed and served.
- c) That the costs of the application be in the cause.

3. It has the following grounds:-

1. That the applicant is desirous of amending its plaint and (sic) dated 3rd March, 2015 as presently on record to include Mr. Alphan Muthami Gilbert as a next of friend to the plaintiff and to lay bare crucial facts which will aid the court in determining the issues (sic) controversy in the suit herein.

2. That the proposed amendments are meant to lay bare the real questions in controversy and ensure that the dispute is adjudicated upon on its true and substantive merits.

3. That the amendment will enable the matter at hand to be effectively and effectually determined by this honourable court.

4. That the defendants shall not suffer any prejudice from the proposed amendments.

5. That this application has been filed within reasonable time.

6. That it is in the interest of justice and fairness that the applicant should be granted leave to amend his plaint filed herein.

4. The application is supported by the affidavit of advocate Ambani Beverlyne Loice which states:

I, Ambani Beverlyne Loice of P. O. Box 55623 – 00200, Nairobi do hereby make oath and state as follows:

1. That I am an advocate of the high court of Kenya, practicing as such in the firm of Kaminza & Ambani Advocates representing the plaintiff herein.

2. That I am seized and have conduct of this matter on behalf of the plaintiff hence competent to swear this affidavit.

3. That after the firm of Kaminza & Ambani advocates was appointed by the plaintiff to take over conduct of this matter on his behalf, I realized that there was need to amend the plaint to include Mr. Alphan Muthami Gilbert as a next of friend to the plaintiff pursuant to leave granted on 8th July, 2019.

4. Further, I realized there was need to amend the plaint to include crucial matters of fact which were not pleaded.

5. That in the circumstances, it is necessary for the plaintiff to amend his plaint.

6. That the proposed amendments are meant to lay bare the real questions in controversy and ensure that the dispute is adjudicated upon on its true and substantive merits.

7. That the amendment will enable the matter at hand to be effectively and effectually determined by this honourable court.

8. That in the circumstances, the proposed amendments do not occasion prejudice upon the defendants herein in any way and/or manner herein which cannot be compensated by way of costs.

9. That this application has been filed within reasonable time.

10. That it is in the interest of justice and fairness that the applicant should be granted leave to amend its plaint filed herein as per the annexed draft amended plaint. I mark "A" and annex hereto a copy of the draft amended plaint.

11. That what is deponed to herein is true to the best of my information, knowledge and/or belief save as to information whose sources have been disclosed.

5. When the application was heard *ex parte* on **30th July, 2019**, M/s Ambani for the applicant told the court that she relied on the grounds on the face of the application and on her supporting affidavit sworn on **18th July, 2019**. She told the court that by allowing the application all issues apposite to this suit would be canvassed effectively.

6. I note that part of the plaintiff's evidence has been heard. I find it necessary to hear the defendants' side before I can consider allowing or disallowing this application.

7. Consequently, I issue the following orders:

a) The prayers sought in this application are not tenable at this *ex parte* stage.

b) The applicant is directed to serve the application upon the defendants within 14 days of today.

c) The application will be heard *inter partes* on **23rd September, 2019**.

Delivered in open Court at Chuka this 30th day of July, 2019 in the presence of:

CA: Ndegwa

M/s Ambani for the Applicant

P.M. NJORGE

JUDGE