



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT THIKA**

**ELC CASE NO.552 OF 2017**

**AVID DEVELOPERS LIMITED.....PLAINTIFF/APPLICANT**

**VERSUS**

**BLUE HORIZON PROPERTIES LTD.....1<sup>ST</sup> DEFENDANT/RESPONDENT**

**THE DIRECTOR OF SURVEYS**

**OF KENYA.....2<sup>ND</sup> DEFENDANT/RESPONDENT**

**THE REGISTRAR OF TITLES**

**ARDHI HOUSE NAIROBI.....3<sup>RD</sup> DEFENDANT/RESPONDENT**

**RULING**

The matter for determination is the **Notice of Motion** application brought by the Plaintiff/Applicant herein under **Order 8 Rules 3 and 5 of the Civil Procedure Rules, 2010** seeking for orders that;- the Plaintiff be granted leave to file an **Amended Plaint** within a period of 14 days and that costs of the application be provided for.

The application is premised on the following grounds;-

- 1) That the 1<sup>st</sup> Defendant in its amended Defence filed on 17<sup>th</sup> May 2018, enjoined the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants***
- 2) It is necessary to amend the Plaint for the effectual adjudication of all issues.***
- 3) The Amendment sought will enable the Court determine the matter effectively.***
- 4) The Defendants will not suffer any prejudice if the proposed amendments are allowed.***
- 5) This Honourable Court has unlimited and unfettered discretion to allow this application and the amendments sought.***

The application is also supported by the affidavit of **James Mwangi Kamau**, who averred that he is the Director of the Plaintiff/Applicant herein. That the 1<sup>st</sup> Defendant amended its defence and enjoined the 2<sup>nd</sup> & 3<sup>rd</sup> Defendants in the suit. Further that he has been advised by his advocate that due to the said joinder, it has become necessary for the **Plaint** to be amended. He also averred that the Plaintiff/Applicant and 1<sup>st</sup> Defendant hold a title to the suit property and hence it is necessary for the court to make directions as to the fate of one title. That it is necessary for the effectual adjudication of all issues in this suit that the amendments sought are to enable this court determine the issues herein effectually. Further that he has been advised by his advocate that the Court has wide and unfettered discretion to grant leave for amendment of pleadings at any stage of the proceedings and that the amendments sought are within the purview of the Civil Procedure Rules. He annexed a copy of the proposed **Amended Plaint**.

The application is opposed by the 1<sup>st</sup> Defendant who filed **Grounds of Opposition** dated **8<sup>th</sup> April 2019** and averred that:-

- 1) The amendments are an afterthought only occasioned by the negotiations between the parties.***
- 2) That the amendments will cause great prejudice and/or injustice to the 1<sup>st</sup> Defendant.***

- 3) *That the prejudice to be occasioned cannot be compensated for by cost. The amendments go to the root of the matter.*
- 4) *The Plaintiff is relying on privileged information which was disclosed during the negotiations.*
- 5) *The Negotiations by the Plaintiff were on false premises only meant to defeat the 1<sup>st</sup> Defendant's case. The Plaintiff was merely on a fishing expedition.*
- 6) *That the amendments are only meant to pervert justice, which this Court should not allow.*
- 7) *The Plaintiff only applied to amend the Plaint to defeat the Defendant's defence.*

When the matter came for hearing on **9<sup>th</sup> April 2019**, the Court directed the parties to file their written submissions in support of and against the instant application within a given timeline. In compliance thereof, the **Law Firm of Kiarie Kariuki & Githii Advocates** for the Plaintiff/Applicant filed their written submissions on **8<sup>th</sup> May 2019**, and urged the court to allow the same. They relied on **Section 100** of the **Civil Procedure Act** which provides:-

*“The court may at any time, and on such terms as to costs or otherwise as it may think fit, amend any defect or error in any proceeding in a suit; and all necessary amendments shall be made for the purpose of determining the real question or issue raised by or depending on the proceeding.”*

The Applicant further relied on **Order 8 Rule 3** of the **Civil Procedure Rules** which Provides:-

*“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.”*

It is evident from the above provisions of law that the court may at any time allow amendments of pleadings for purpose of determining the real question or issue raised by a party.

The principles to be considered while determining whether to allow or not to allot the amendments were set out of the Court of Appeal in the case of **Central Kenya Ltd...Vs...Trust Bank Ltd & 5 Others (2000) eKLR**, where it was held:-

*“All amendments should be freely allowed and at any stage of the proceedings , provided that the amendment or joinder as the case may be, will not result in prejudice or injustice to the other party which cannot properly be compensated for in costs.”*

Therefore for the Court to allow such amendment sought, the same should be necessary for the purpose of determining the real question in controversy, to avoid multiplicity of suits and prevent undue delay. Further the same should not occasion prejudice on injustice to the other side which cannot be properly compensated for in costs.

The 1<sup>st</sup> Defendant opposed the instant application through the grounds of opposition but did not file any written submissions. It is evident that the 1<sup>st</sup> Defendant did amend the Defence and included a Counter Claim. The Plaintiff has sought to amend the Plaint to align itself with the amendments brought about by the 1<sup>st</sup> Defendant. The amendments as sought by the Plaintiff/Applicant are necessary for the purpose of determining the real question in controversy. It is evident that the said amendments will not occasion any prejudice or injustice to any of the parties herein.

Though the Defendant did oppose the instant **Notice of Motion** through its **Grounds of Opposition**, the issues raised on the said **Grounds of Opposition** were never substantiated. This court therefore finds that the said **Grounds of Opposition** are not merited and they are thus dismissed entirely. However the court finds the instant **Notice of Motion** dated **15<sup>th</sup> February 2019**, by the Plaintiff/Applicant is merited. The said application is allowed entirely with costs to the Applicant to be borne by 1<sup>st</sup> Defendant/Respondent. The proposed **Amended Plaint** to be filed within a period of **14 days** from the date hereof.

The Defendants have **14 days** to file their response if need be. Matter to be set down for hearing thereafter.

It is so ordered.

*Dated, Signed and Delivered at **Thika** this 12<sup>th</sup> day of July 2019.*

**L. GACHERU**

**JUDGE**

**12/7/2019**

In the presence of

Mr. Kevero holding brief for M/S Githii for Plaintiff/Applicant

No appearance for 1<sup>st</sup> Defendant/Respondent

No appearance for 2<sup>nd</sup> Defendant/Respondent

No appearance for 3<sup>rd</sup> Defendant/Respondent

Lucy - Court Assistant.

**Court** – Ruling read in open court.

**L. GACHERU**

**JUDGE**

**12/7/2019**