



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC CIVIL CASE NO.12 OF 2011

MARION WAKANYI KAMAU.....PLAINTIFF

=VERSUS=

DELIVERANCE CHURCH

REGISTERED TRUSTEES.....1ST DEFENDANT

GEOFFREY KAMAU NJUGUNA.....2ND DEFENDANT

RULING

1. This is the Notice of Motion dated 24th May 2018, brought under Sections 1A, 1B of the Civil Procedure Act, Cap 21 Laws of Kenya, order 8, rule 3 and order 51 rule 1 of the Civil Procedure Rules and all other enabling provisions of the law.

2. It seeks orders:-

(1) That this honourable court may be pleased to grant the plaintiff leave to amend the plaint in the terms of the draft Amended Plaint annexed hereto.

(2) That the draft amended plaint attached hereto be deemed to be duly filed and served upon payment of the requisite court fees.

(3) That the costs of this application be in the cause.

3. The grounds are on the face of the application and are set out in paragraphs (a) to (e).

4. The application is supported by the affidavit Marion Wakanyi Kamau, the plaintiff/applicant sworn on the 24th May 2018.

5. The application is opposed. There is a replying affidavit sworn by Geoffrey Kamau Njuguna, the 2nd respondent/defendant sworn on the 31st October 2018.

6. The application was canvassed by written submissions.

7. I have considered the notice of motion, the affidavit in support and the annexures. I have also considered the replying affidavit and the annexures. I have considered the replying affidavit and the annexures, the written submissions of counsel and the authorities cited.

8. The issue for determination is whether this application is merited.

9. I have considered the reasons given by the plaintiff to amend the plaint.

10. **Order 8 rule 3(1)** of the Civil Procedure Rules 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.”

Order 8 rule 3(5) of the Civil Procedure Rules provides that:-

“An amendment may be allowed under sub rule (2) notwithstanding that its effect will be to add or substitute a new cause of action if the new cause of action arises out of the same facts or substantially the same facts as a cause of action in respect of which relief has already been claimed in the suit by the party applying for leave to make the amendment.”

11. I find that the plaintiff has made out a good case for amendment of the plaint and the same is allowed. I rely on the case of **Central Kenya Ltd & 4 Others vs Trust Bank Ltd CA Civil Appeal No. 222 of 1998.**

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

(a) That leave be and is hereby granted to the plaintiff to amend its plaint in terms of the draft amended plaint annexed hereto.

(b) That the draft amended plaint to be duly filed and served upon payment of the requisite fees.

(c) That the defendant do have 21 days to file amended defence if need be.

(d) That costs of this application be borne by the plaintiff.

It is so ordered.

Dated, signed and delivered in Nairobi on this 17th day of October 2019.

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L. KOMINGOI

JUDGE

In the presence of:-

No appearance for the Plaintiff

No appearance for the Defendant

Kajuju -Court Assistant