



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAKURU

ELC No. 338 OF 2012

ANTON LEVITAN.....PLAINTIFF

VERSUS

ANTHONY MWAURA.....DEFENDANT

RULING

1. This is a ruling in respect of plaintiff's Notice of Motion dated 11th September 2017, an application pursuant to which the plaintiff seeks leave to amend the plaint so as to introduce a prayer for mesne profits and a prayer directing police to offer assistance in a contemplated eviction. The application is supported by an affidavit sworn by Valentine Mwendu Wanyoike, an advocate having conduct of the matter on behalf of the plaintiff.

2. Though the court encouraged parties to attempt a settlement of the application, no settlement was reached. Ultimately, the court gave directions regarding filing of a replying affidavit as well as written submissions. Counsel for the respondent opted not to file any replying affidavit or written submissions. The applicant filed written submissions on 30th November 2017.

3. I have considered the application and the submissions filed by the applicant. The application is essentially unopposed. Pursuant to Order 8 rule 5(1) of the Civil Procedure Rules, the court has power to order amendment for the purpose of determining the real question in controversy between the parties. The said rule provides:

For the purpose of determining the real question in controversy between the parties, or of correcting any defect or error in any proceedings, the court may either of its own motion or on the application of any party order any document to be amended in such manner as it directs and on such terms as to costs or otherwise as are just.

4. As a general rule, leave to amend should be granted if no injustice will be occasioned to the respondent. As already pointed out, the present application is not opposed. I see no reason why leave to amend should not be granted.

5. In the circumstances, I order that:

- a) The plaintiff is granted leave to amend the plaint in terms of the draft amended plaint annexed to Notice of Motion dated 11th September 2017.
- b) The amended plaint to be filed and served within 14 (fourteen) days of delivery of this ruling.
- c) The defendant is at liberty to file and serve an amended defence, if need be, within 14 (fourteen) days of service of the amended plaint.
- d) Costs in the cause.

6. It is so ordered.

Dated, signed and delivered in open court at Nakuru this 31st day of July 2018.

D. O. OHUNGO

JUDGE

In the presence of:

Mr Lukoba holding brief for Mr Maanda for the plaintiff/applicant

Mr Langat holding brief for Mr Karanja for the defendant/respondent

Court Assistants: Gichaba Lotkomoi