



**REPUBLIC OF KENYA**

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

**ELC CASE NO. 18 OF 2015**

**EUNICE CHEPKORIR SOI.....PLAINTIFF**

**VERSUS**

**BOMET WATER COMPANY LIMITED.....DEFENDANT**

**RULING**

**Introduction**

1. By a Notice of Motion Application dated 13<sup>th</sup> March, 2018 brought pursuant to sections 1A, 1B and 3A of the Civil Procedure Act and Order 1 Rule 10(2), 14 and 25 and Order 8 Rule 3 of the Civil Procedure Rules the plaintiff seeks leave to amend her plaint to enjoin Emily Cheptonui Ngetich, Edina Chepngeno Bii as the 2<sup>nd</sup> and 3<sup>rd</sup> Plaintiff, and the County Government of Bomet as the 2<sup>nd</sup> Defendant respectively in terms of the annexed draft plaint.

2. The application is opposed by Bomet Water Co. Ltd and The County Government of Bomet through their Statement of Grounds of Opposition dated 24th July, 2018. They maintain that the proposed additional plaintiffs are strangers before this Court since their joinder will not in any manner help the determination of the issues in controversy. They also state that the Plaintiff has not complied with the provisions of the Government Proceedings Act as it is a settled position of law that a County Government is a Government within the meaning of the Governments Proceedings Act.

3. The only issue for determination is whether the Plaintiff ought to be granted leave to amend her plaint.

4. The principles that should guide the court in dealing with applications for amendments are elaborated in **Mulla, the Code of Civil Procedure, 18<sup>th</sup> Ed, Vol 2 pages 1751-1752** which has been cited in various authorities including the case of **Coffee Board of Kenya V Thika Coffee Mills Limited & 2 Others (2014) eKLR** where it is stated as follows:

- i. Amendments should be allowed which are necessary for determination of the real controversies in the suit;*
- ii. The proposed amendment should not alter and be a substitute of the cause of action on the basis of which the original list was raised;*
- iii. Inconsistent and contradictory allegations in negation to the admitted position of facts or mutually destructive allegations of fact would not be allowed to be incorporate by means of amendments;*
- iv. Proposed amendments should not cause prejudice to the other side which cannot be compensated by means of costs;*
- v. Amendments of a claim or relief barred by time should not be allowed;*
- vi. No amendment should be allowed which amounts to or results in defeating a legal right to the opposite party on account of lapse of time*
- vii. No party should suffer on account of the technicalities of law and amendment should be allowed to minimize the litigation between the parties*
- viii. The delay in filing the petitions for amendment should be properly compensated by costs*
- ix. Error or mistake, which is not fraudulent, should not be made the ground for rejecting the application for amendment of pleadings”*

5. In the case of **Joseph Ochieng & 2 Others V Frist National Bank of Chicago Civil Appeal No. 149 of 1991** the Court of Appeal while citing with approval Bullen, Leake & Jacobs in Precedents of Pleadings, 12<sup>th</sup> Edition remarked regarding amendment of pleadings as follows:

***“The power to so amend can be exercised by the court at any stage of the proceedings ( including appeal stage); that as a general rule however late, the amendment is sought to be made it should be allowed if made in good faith provided costs can compensate the other side...that if the proposed amendment introduces a new case or new ground of defence it can be allowed unless it would change the action into one of a substantially different character which would more conveniently be made the subject of a fresh action..”***

6. In the case of **Institute For Social Accountability& Another v Parliament of Kenya & 3 others [2014] eKLR**, Lenaola, Mumbi and Majanja J while determining whether to allow the petitioner to amend their consolidated petitions the court observed that:

***“The object of amendment of pleadings is to enable the parties to alter their pleadings so as to ensure that the litigation between them is conducted, not on the false hypothesis of the facts already pleaded or the relief or remedy already claimed, but rather on the basis of the true state of the facts which the parties really and finally intend to rely on. The power of amendment makes the function of the court more effective in determining the substantive merits of the case rather than holding it captive to form of the action or proceedings.”***

7. From the foregoing it is clear that the Court has a wide discretion in dealing with an application to amend pleadings unless the other side is able to demonstrate that they would seriously be prejudiced by the proposed amendment. The Respondent has raised valid points with regard to the Government Proceedings Act which I believe can be canvassed at the main hearing.

8. Having carefully considered the application, affidavits, pleadings and submissions of counsel as well as the law on amendment of pleadings, and also mindful of the overriding objective of the Civil Procedure Act which is to facilitate the just, expeditious, proportionate and affordable resolution of civil disputes, I am of the view that the application is merited and I grant it.

9. The Plaintiff shall however bear the costs of the application to cushion the Defendant from the inconvenience caused.

10. I further direct that draft amended plaint be deemed as duly filed upon payment of the requisite court fees.

**Dated, signed and delivered this 12<sup>th</sup> day of September, 2018.**

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**J.M ONYANGO**

**JUDGE**