



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT THIKA

ELC CASE NO.280 OF 2017

NJOWAMBU KENYA LIMITED.....PLAINTIFF/APPLICANT

VERSUS

JINIT MOHANLAL SHAH.....DEFENANT/RESPONDENT

RULING

The Plaintiff/Applicant filed this *Notice of Motion* dated **12th September 2017** brought under **Order 8 Rule 3(1) (2)(5)** of the *Civil Procedure Rules* and **Section 3A** and **100** of the *Civil Procedure Act* and sought for orders that it be granted leave to amend its *Plaint* as set out in the *Draft Amended Plaint* and that the *Draft Amended Plaint* be deemed as duly filed and served.

The Applicant alleged that the amendment is prompted by the fact that in the earlier *Plaint* omitted the particulars of fraud committed by the Defendant and that the Plaintiff intends to include more prayers against the Defendant.

The Applicant is opposed and the Defendant/Respondent filed *Grounds of Opposition* and averred that the instant application is ***misconceived, devoid of any merit*** and is an ***abuse of the court process***. Further that the Plaintiff is guilty of laches and the Respondent stands to suffer great prejudice as the amendments sought seek to introduce new claims and the issues raised will substantially change the character of the suit.

The application was canvassed by way of written submissions which this Court has carefully read and considered. The application is anchored under **Order 8 Rule 3(1)** of the *Civil Procedure Rule* which grants the court discretion to allow amendments of the pleadings at any stage of the proceedings. However the said discretion must be exercised judicially and with caution.

The Applicant has sought to amend the *Plaint* to include the particulars of fraud and has also included more prayers. The suit herein has not commenced and so the Defendant has an opportunity to file an *Amended Defence* and respond to the issues raised. The particulars of fraud do not change the character of the suit since the claim is over the same suit property.

Courts have always taken a stand that amendments of pleadings sought before the hearing should be freely allowed if they can be made without injustice to the other side. See the case of ***Eastern Bakery...Vs... Castelino (1958) EA 461***, where the Court held that:-

“Amendments to pleadings sought before the hearing should be freely allowed if they can be made without injustice to the other side and there is no injustice if the other side can be compensated by costs”.

The Court has found and held that the Applicant is only seeking to include particulars of fraud in the suit together with additional prayers. Though the amendments will cause delay in prosecution of this matter, there will be no prejudice or injustice that will be occasioned to the Defendant as the inconvenience caused to be Defendant can be compensated by way of costs.

For the above reasons, the Court allows the Plaintiff's/Applicant's *Notice of Motion* dated **12th September 2017** entirely. However, the Plaintiff/Applicant will pay costs of **Kshs.30,000/=** to the Defendant/Respondent.

The *Amended Plaint* to be deemed as properly filed upon payment of the requisite fees and that should be within a period of **7 days** from the date hereof.

The Defendant has leave of **7 days** after service to file *Amended Defence* if need be.

The parties to prepare the suit for hearing and the same to be heard expeditiously in the month of **December 2018** during the **Service Week**.

It is so ordered.

Dated, Signed and Delivered at Thika this 6th day of November 2018.

L. GACHERU

JUDGE

In the presence of

M/S Kinyua holding brief for J. K. Ngaruiya for the Plaintiff/Applicant

Mr. Maina holding brief for M/s Asila for the Defendant/Respondent

Lucy - Court clerk

Court – Ruling read in open court in the presence of the above stated advocates.

L. GACHERU

JUDGE

6/11/2018