



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC. CASE NO. 735 OF 2007

(CONSOLIDATED WITH ELC CASE NO. 325 OF 2009)

ESTHER MUKULU MUTUKU (suing through

JOSEPH MUTUKU MANTHI.....PLAINTIFF

=VERSUS=

RAHAB M'KIAMA (T/A METRA INVESTMENTS).....1 ST DEFENDANT

METRA INVESTMENTS LIMITED.....2ND DEFENDANT

DIANA RACHEL KAVEDZA.....3RD DEFENDANT

RULING

1. Through the order of Gitumbi J rendered on 3/12/2013, Nairobi ELC Case Number 325 of 2009 was consolidated with Nairobi ELC Case Number 735 of 2007. Nairobi ELC Case Number 735 of 2007 was designated as the Lead File. The consolidation order was made in Nairobi ELC Case Number 735 of 2007.

2. On 5/4/2017, Rahab M'Kiama and Metra Investments Limited (the **applicants**) brought a notice of motion in Nairobi ELC Case Number 325 of 2009 dated 5/4/2017 seeking to strike out the amended plaint dated 20/3/2017 and the entire suit on the ground that there was no substantive order in the court file granting the plaintiff leave to amend the plaint. They further contended that the order relied upon by the plaintiff to amend the plaint was obtained through misrepresentation of facts. The application was supported by the affidavit of Martin Njeru Nyaga sworn on 5/4/2017.

3. I have considered the application together with the entire record relating to the two consolidated causes. I have also considered the parties' affidavits and submissions. The only amendment brought in through the impugned amended plaint relates to the substitution of Esther Mukulu Mutuku in place of Joseph Mutuku Mwanthi who is now deceased. On the face of the amended plaint, it is indicated that the amendment was made pursuant to the order of the court made on 22/5/2015. I have perused the court record and I have confirmed that on 22/5/2015, Gitumbi J rendered a ruling in the lead file in which she allowed the said substitution. In my view, it is logical that substitution having been allowed by the Court through the said ruling, the plaint had to be amended to reflect the name of the new plaintiff. In the absence of any other material amendment to the plaint, I am satisfied that the amendments were properly effected within the purview of the order which allowed substitution.

4. Lastly, it was contended that the amended plaint should be struck out because there was no verifying affidavit accompanying it. I do not agree with that view. Order 8 of the Civil Procedure Rules which provides for amendments to pleadings does not make verifying affidavits mandatory documents to accompany amended plaints. For those reasons, the plea is declined.

5. The net result is that I find no merit in the application and the same is declined. There shall be no order as to costs of the application.

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 18TH DAY OF DECEMBER 2018.

B M EBOSO

JUDGE

In the presence of:-

Mr Gichoya holding brief for Mr Havi for the 3rd defendant and holding brief

for Mr Njeru for the 1st and 2nd defendant Applicants

Mrs Mutua for the plaintiff

June Nafula - Court Clerk