

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

E & L CASE NO. 56A OF 2013

(Formerly Eldoret Hccc No. 130 of 2011)

SUNRISE ORTHOPAEDIC & TRAUMA HOSPITAL LTD.....1ST PLAINTIFF

DAVID LANGAT.....2ND PLAINTIFF

VERSUS

DR. LECTARY KIBOR KEIYO LELEI.....1ST DEFENDANT

SUNRISE ORTHOPAEDIC & TRAUMA HOSPITAL LIMITED.....2ND DEFENDANT

RULING

Sunrise Orthopaedic & Trauma Hospital Limited and **David Langat** have sued **Dr. Lectary Kibor Keiyo Lelei** and **Sunrise Orthopaedic & Trauma Hospital Limited** and has sought to amend the consolidated and re-amended plaint. The grounds for amendment are for purposes of determining the real issue in controversy between the parties. There are two issues to be determined thus whether Sunrise Orthopaedic and Trauma Hospital Limited is entitled to L.R. Eldoret Municipality Block 8/90 and whether David Langat is entitled to an order compelling Dr. Lelei to refund David Langat Kshs. 21,470,686. It is stated that amending the plaint as proposed will assist the court in determining the read question in controversy between the parties. The supporting affidavit of David Langat reiterates what is stated in the grounds of the opposition.

The 1st defendant filed grounds of opposition whose gist is that no sufficient grounds have been laid down for the orders sought. Moreover, that the amendment substitutes the cause of action and that the amendments are vitiated by the Limitation of Actions Act.

I have considered the application, the grounds of opposition and do begin by stating that amendment of pleadings with leave of the court is provided for under Order 8, Rule 3 of the Civil Procedure Rules, 2010. Under this provision of law, the court has a wide discretion to allow amendment of pleadings. According to Order 8, Rule 3(1), the court may allow any party to amend pleadings on such terms as to costs or otherwise as may be just and in such manner as it may direct.

Subsection 3(2) provides that the court may allow the amendment even where the period of Limitation has expired where it thinks just so to do. An amendment will be allowed even if the effect would be to substitute a party or introduce a new cause of action.

I do consider this provision and do find that the plaintiff is entitled to the orders sought. I do grant leave to amend the plaint as prayed. The amended plaint to be filed and served within 2 days. The defendants to file and serve amended defence within 3 days of serve. Mention on 10.12.2018.

Dated and delivered at Eldoret this 3rd day of December, 2018.

A. OMBWAYO

JUDGE