



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT**

**AT MOMBASA**

**ELC CASE NO. 424 OF 1996**

SAIFUDEEN ABDULLAH BHAI

HUSSEIN ABDULLAH BHAI.....PLAINTIFFS/APPLICANTS

-VERSUS-

ZAINAB MWINYI.....DEFENDANT/RESPONDENT

**RULING**

1. This ruling is in respect of an application dated 13.5.16 in which the plaintiffs/applicants sought leave to amend their plaint as well the extension of interim orders of injunction issued on 21.2.2014 which they state has lapsed due to operation of the law.
2. The application is supported by the grounds on the face of it and the affidavit sworn by the 1<sup>st</sup> plaintiff. The application is opposed by the defendant's replying affidavit. According to the defendant, more than 27 months have lapsed since the injunctive orders were issued therefore there are no orders to be extended. On amendment, she said what is sought to be introduced have always been within the knowledge of the plaintiffs.
3. This is a very old matter which has not been set down for hearing due to several interlocutory applications that have been filed and determined. Because it has not taken off, I find no reason to refuse the amendment. Whether the issues being brought by the amendment are time barred, I believe the defendant can state so in her defence. The prayer for further amendment is therefore allowed as the defendant has not said she will be prejudiced. She can file amended defence if need be. Consequently I grant request for amendment with an order that the draft re-amended plaint annexed be deemed as duly filed upon payment of the requisite court fees. The defence has 14 days of being served to file amended defence if need be.
4. In respect to the extension of the interim orders of injunction, I have perused the Court file and confirmed that the orders were issued on 21<sup>st</sup> February 2014. Subsequent to this, the plaintiffs filed an application for contempt of Court. This application was determined on 11<sup>th</sup> May 2016. Prior to this the Court determined on 14<sup>th</sup> November 2014 a preliminary objection raised by the defendant on validity of the contempt proceedings.
5. From February 2014 to date the file has been actively in Court. It is not like the plaintiffs went to sleep after obtaining the orders of injunction. I therefore cannot fault them for not having this matter concluded within a period of 12 months as is envisaged under the provisions of Order 40 rule 6. I am thus satisfied cause has been shown why the orders should be extended. However in order to limit the plaintiffs from delaying in fixing this matter for hearing, the orders are hereby extended on condition that the plaintiffs comply with the pre-trial directions within 45 days from today. In default the orders stand vacated. If they do comply then the orders of injunction shall remain in force till the suit is determined.
6. This being an old matter, I exercise my discretion and fix the same for pre-trial directions on 23.3.2017. Costs of the application are awarded to the defendant in the cause.

**Dated and delivered in Mombasa this 10<sup>th</sup> day of February 2017.**

**A. OMOLLO**

**JUDGE**