



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT CHUKA

CHUKA ELC CASE NO 15 OF 2017

FORMERLY MERU ELC CASE NO. 170 OF 2014

**IN THE MATTER OF 1 ½ ACRE OF LAND WITHIN LAND PARCEL NO.
MAGUMONI/THUITA/494 REGISTERED IN THE NAMES OF KITHINJI NJOKA,
MURITHINJOKA, MUTEMBEI NJOKA**

LOYFORD MURIUKI RIARA.....1ST PLAINTIFF

ZIPPORAH MUTHONI RIARA.....2ND PLAINTIFF

CATHERINE CIANDEKE.....3RD PLAINTIFF

VERSUS

KITHINJI NJOKA.....1ST DEFENDANT

MURITHI NJOKA.....2ND DEFENDANT

MUTEMBEI NJOKA.....3RD DEFENDANT

JUSTIN NYAGA NKIINI.....4TH DEFENDANT

SUSAN CIAMWARI.....INTERESTED PARTY

RULING

1. This application is dated 4th April, 2016 and seeks orders:

1. That this honourable court be pleased to admit the amended Notice of Motion and the Amended Originating Summons both dated 11th February, 2015 out of time.

2. That the said the amended Notice of Motion and the Amended Originating Summons both dated 11th February, 2015 and filed on the 12th February, 2015 be deemed as duly filed and served and properly on the court record.

3. The costs of this application be provided for.

2. The application is supported by the affidavit of LOYFORD MURIUKI RIARA and has the following grounds:-

1. That on the 15th day of December, 2014, the Plaintiff/Applicant was granted leave by this Honourable to amend their pleadings within 30 days.
2. That the amended Notice of Motion and the Amended Originating Summons were however filed on the 12th February, 2015, few days later after the expiry of the leave period.
3. That the said amendments to the plaint, were done without applying for extension of leave of the Honourable Court which act contravenes the provisions of order 8 of the Civil Procedure Rules.
4. That the difference in time was only brief, and the failure to apply for the courts leave to amend the plaint was an oversight on the part of the plaintiff's advocate.
5. That the same was not out of undue disregard for the law and procedure, but an honest mistake on the part of the Plaintiff/Applicants Advocates.
6. That the Honourable court ought not visit the mistakes of the Advocates on the plaintiff.
7. That unless this Honourable court grants an order to admit the amended Notice of Motion and the Amended Originating Summons out of time the same is at risk of being struck out with fatal consequences to the plaintiffs claim.
8. That it is only fair and just that this application be allowed.
9. That disallowing this application is highly prejudicial to the plaintiff.

3. The parties have put in written submissions and both of them take diametrically opposed positions.
4. The plaintiffs say that they were late in amending their pleadings by a few days after the 30 days granted by the court. They have proffered the case of Central Kenya Limited Versus Trust Bank Limited, (2000) EALR 365 in support of their propositions.
5. The defendants have vehemently opposed the application. They say that the plaintiffs clearly acted outside the law. They say that the spirit of the law must be upheld at all times.
6. I have considered, the pleadings and the submissions proffered by the parties. In the interests of Justice, however, and without encouraging the applicants not to, in future, file documents beyond the granted time, I will allow the application.
7. Costs shall be in the cause.
8. The plaintiffs are ordered to fully comply with order 11, CPR, within 30 days of today and the defendants are ordered to comply with order 11, CPR within 30 days of their receipt of the plaintiffs' compliance documents.
9. Parties will take directions regarding a possible hearing date of the suit on 28.6.2017.
10. Costs shall be in the cause.
11. It is so ordered.

Delivered in open court at Chuka this 22nd day of March, 2017 in the presence of:

CA: Ndegwa

Kiongo h/b Miss Mutinda for the plaintiff

Nyamu Nyaga for the defendants and the interested party.

P. M. NJOROGI,

JUDGE.