



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

**ELC CIVIL SUIT NO. 141 OF 2014**

**SAMUEL GICHERU NJORA.....PLAINTIFF**

**VERSUS**

**EQUITORIAL BANK.....1<sup>ST</sup> DEFENDANT/RESPONDENT**

**GARAM INVESTMENT AUCTIONEERS.....2<sup>ND</sup> DEFENDANT/RESPONDENT**

**R U L I N G**

1. This is an application dated 22<sup>nd</sup> November 2016 brought by the Plaintiff and seeking for orders: -

i. **THAT this Honourable Court be pleased to grant leave to the Plaintiff to amend his plaint in terms of the Annexed Draft Amended Plaint and the same be deemed to be the duly Amended Plaint and deemed to be duly filed on payment of the requisite fees.**

ii. **THAT the defendants be deemed to be duly served and are at liberty to reply within fourteen (14) days from the date of the Order.**

iii. **THAT the costs of this application be in the cause.**

2. The Application which is supported by the Plaintiff Samuel Gicheru Njora's Affidavit sworn on 22<sup>nd</sup> November 2016 is premised on five major grounds, namely that: -

a. The Plaintiff is desirous to amend his Paint in terms of the annexed Draft Amended Plaint.

b. The Proposed Amendments are necessary to give more particulars of the cause of action for purposes of effectual determination of the suit herein.

c. Among the proposed amendments is a claim and prayer for money and interest wrongfully withheld and/or deducted by the 1<sup>st</sup> Defendant in respect of the cause of action in the Plaint.

d. This application is the only revenue evetime for the Plaintiff to introduce the proposed amendments.

e. No prejudice will be suffered by the Defendant if the orders sought are granted as the full hearing of the case has not commenced.

3. The Application is opposed by the Respondents. In their Ground of Opposition filed on 5<sup>th</sup> December 2016, the Respondents oppose the application on the following grounds: -

- i. The application is bad in law, incompetent and an abuse of the process of this Honourable Court.
- ii. The Complaint annexed as SGN-1 in the Applicant's Supporting Affidavit does not disclose any amendment pursuant to order 7(2) and 7(3) of the Civil Procedure Rules 2010 and is itself a new Complaint thus a new claim.
- iii. That the Application be dismissed with costs.

4. The general power of the court to amend pleadings draws from Section 100 of the Civil Procedure Act. The said Section as well as Order 8 Rule 3 of the Rules of Procedure enacted under the Act provide a broad criteria meant to guide the courts in the exercise of their discretion to allow or to disallow proposed amendments to pleadings. The above provisions of the law expressly provide that the court has discretionary power to amend pleadings at any stage before Judgement for purposes of determining the real question or issue which has been raised by parties. That discretionary power is exercised so as to do justice to the case and must therefore be exercised judiciously and not whimsically.

5. In *Institute for Social Accountability & Another -vs- Parliament of Kenya & 3 Others (2014) eKLR*, Lenaola, Mumbi and Majanja JJ., while determining whether to allow the Petitioner to amend their consolidated Petitions observed that:

“The object of amendment of pleadings is to enable the parties to alter their pleadings so as to ensure that the litigation between them is conducted, not on the false hypothesis of the facts already pleaded or the relief or remedy already claimed, but rather on the basis of the true state of the facts which the parties really and finally intend to rely on. The power of amendment makes the function of the court more effective in determining the substantive merits of the case rather than holding it captive to the form of the action or proceedings.

6. In the instant case, it is the Plaintiff's claim that the Defendants acted illegally and wrongfully in advertising his land for sale. It is the Plaintiff's further case that the Defendants are colluding to defraud him of the true value of the property and to benefit themselves contrary to the law. He prays that the intended sale be suspended as the same is aimed at defeating his equity of redemption according to Section 97 of the Land Act, 2012. The amendments sought at paragraph 10 of the Complaint in my view are meant to bring about all the material aspects of the Plaintiff's claim against the Defendants. From the record, I note that this is a matter that was filed in June 2014 but it yet to proceed for trial. In *Eastern Bakery -vs- Castelino (1958) EA. 461*, Sir Kenneth O' Connor, President of the Court of Appeal for Eastern Africa, stated: -

“It will be sufficient....to say that amendments to pleadings sought before the hearing should be freely allowed; if they can be made without injustice to the other side and that there is no injustice if the other side can be compensated by costs.”

7. In the case before me, the respondents have not demonstrated what injustice, if any, they will suffer if the applicant is granted leave to amend. It is indeed clear that if such leave is granted, the respondents will also benefit from leave to amend their defence and demonstrate why in their view the Plaintiff's amendments are unnecessary. The right to be accorded a hearing and a fair one at that is embedded in Article 50(1) of the Constitution and I think it is proper and just that the Plaintiff be allowed to ventilate his claim against the defendants in the best way that he understands.

8. The upshot of the above is that in the exercise of this Court's discretion, I allow the Plaintiff's application and grant him leave of 14 days from the date of this ruling to file a properly amended Complaint. The defendants will also have leave to file an amended defence within 14 days from the date of service upon their counsel of an amended Complaint, if need be. The costs of this application shall be in the cause.

**Dated, signed and delivered in Malindi this 21<sup>st</sup> day of April 2017.**

**J.O. OLOLA**

**JUDGE**