



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT**  
**AT KERUGOYA**  
**ELC CASE NO. 26 OF 2016**

**DANSON MUNENE KIBETU.....PLAINTIFF**

**VERSUS**

**EDWARD NJERU.....1<sup>ST</sup> DEFENDANT**

**EVANS MBOGO MWANGI.....2<sup>ND</sup> DEFENDANT**

**JAMES MURIUKI KIRAGU.....3<sup>RD</sup> DEFENDANT**

**RULING**

This is in respect to the 1st defendant's oral application made on 21st March 2017 seeking to amend paragraph six (6) of his defence to include the year as 2010 and also the last sentence to read six (6) years. In his defence, the 1st defendant appears to have left some spaces blank which he now seeks to fill through that amendment. In arguing that application, **MR. MUNENE** advocate for the 1st defendant told the Court that the omission was not intentional.

**MS MUTHIKE** advocate for the plaintiff objected to the application stating that she had informed counsel for the 1st defendant about those gaps but nothing was done. That this is an afterthought meant to prejudice the plaintiff's case as it has been made after the plaintiff has testified.

**MR. NGIGI** counsel for the 2nd defendant has no objection to the amendment stating that it will assist the Court to determine the issues.

**Order 8 Rule 8 of the Civil Procedure Rules** grants the Court power to consider an oral application to amend pleadings. Courts have a wide discretion to allow amendment of pleadings at any time unless it can be shown that the other party will be prejudiced which prejudice cannot be remedied by an award of costs – **EASTERN BAKERY VS CASTELINO 1959 EA 461**. The overriding consideration is whether the amendments sought are necessary for the determination of the suit and whether the delay in bring the application for amendment is likely to prejudice the opposite party beyond compensation in costs – **CENTRAL KENYA LTD VS TRUST BANK LTD (2000) 2 E.A 365 (2000) e K.L.R.**

The oral application herein was made after the plaintiff had finished giving his evidence and just before cross-examination. It is not clear why **MR. MUNENE** did not make that application at the commencement of the trial bearing in mind that **MS MUTHIKE** had drawn his attention to the gaps in the 1st defendant's defence. Nonetheless, this Court takes into account the wide powers donated to it to allow amendments at any stage of the trial. The trial has just commenced and the plaintiff who had

finished testifying but was yet to be cross-examined can be red-called. In my view there will be no prejudice that cannot be compensated for in costs.

I therefore allow the oral amendment to amend the 1st defendant's defence as prayed and make the following further orders:

- 1. The plaintiff is at liberty to amend his reply to the defence within 15 days from today.*
- 2. The plaintiff be re-called to testify again following that amendment.*
- 3. The 1st defendant shall meet the plaintiff's costs occasioned by that application.*
- 4. The case be mentioned on 31st May 2017 for further direction as to hearing.*

**B.N. OLAO**

**JUDGE**

**5<sup>TH</sup> MAY, 2017**

Ruling dated, signed and delivered in open Court this 5<sup>th</sup> day of May 2017

Mr. Ngigi for 3<sup>rd</sup> Defendant present

Mr. Muchira for Mr. Munene for 1<sup>st</sup> & 2<sup>nd</sup> Defendants present

Ms Muthike for Plaintiff absent.

**B.N. OLAO**

**JUDGE**

**5<sup>TH</sup> MAY, 2017**