



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS**

**ELC. CASE NO. 124 OF 2015**

**SHASHIKANT K. PATEL.....PLAINTIFF**

**VERSUS**

**THOMAS MARK MUMO MAINGEY.....DEFENDANT**

**RULING**

1. In the Notice of Motion dated 2<sup>nd</sup> February, 2017, the Plaintiff is seeking for the following orders:
  - a. That the Honourable Court be pleased to grant leave to the Plaintiff/Applicant to amend his **Plaint in terms of the annexed draft amended **Plaint** and the Defendant be granted corresponding leave to amend his statement of Defence if need be.***
  - b. That the draft **Plaint** attached to this **Application** be deemed as duly filed and served.*
2. The Application is premised on the grounds that the Plaintiff has sued the Defendant for the transfer of 17.5 acres of land that he purchased from the Defendant; that during typing, the secretary erroneously typed 15 acres instead of 17.5 acres and that it would appear from the Defence that the land has been sub-divided further.
3. It is the Plaintiff's case that he was not aware of the sub-division of the land and all along believed that the suit land was L.R. No. 1338/R.
4. In response, the Defendant deponed that the Agreement of 9<sup>th</sup> July, 2002 was contingent upon fulfillment of certain conditions; that on 15<sup>th</sup> July, 2003, it was agreed that the transaction could not be completed due to the consent that was filed stipulating that the suit land could only be leased and that they entered into another agreement of 1<sup>st</sup> September, 2005 for the sale of 15 acres.
5. According to the Defendant, the prayer to amend the **Plaint** is an afterthought having been filed after two (2) years.
6. The parties filed brief submissions which I have considered.
7. The Plaintiff's case is that the Sale Agreement between him and the Defendant was in respect to land known as L.R No. 1338/R measuring 17.5 acres. However, the Plaintiff inadvertently showed that the land measures 15 acres.
8. The Plaintiff has further stated that he has since learnt that the suit land is now being referred to as L.R No. 1338/111 after L.R. No. 1338/R was sub-divided by the Defendant.

9. Order 1 Rule 10(2) of the Civil Procedure Rules provides that the court may at any stage of the proceedings allow amendments to be done to pleadings.

10. In the case of *Eastern Bakery vs. Castellino (1958) E.A 461*, the court held that amendments to pleadings sought before the hearing should be freely allowed if they are made without injustice to the other party, and if there is no prejudice that cannot be compensated by cost.

11. The Plaintiff simply wants to cite the correct parcel number after the alleged sub-division of L.R. No. 1338/R.

12. The Defendant is at liberty to deny the averments in the amended Plaintiff by filing an amended Defence.

13. Indeed, whatever averments the Plaintiff is seeking to introduce in the amendments, the Plaintiff will have to prove them at trial.

14. In the circumstances, and considering that the proposed amendments do not purport to raise a new cause of action, I do not see the prejudice that the Defendant shall suffer if the amendments are allowed.

15. For those reasons, I allow the Application dated 2<sup>nd</sup> February, 2017 as prayed. The amended Plaintiff to be filed and served within fourteen (14) days from the date of this Ruling.

**DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 22<sup>ND</sup> DAY OF SEPTEMBER, 2017.**

**O. A. ANGOTE**

**JUDGE**