



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
ENVIRONMENT AND LAND COURT
ELC. CASE NO. 393 OF 2013

CHURCH COMMISSIONERS FOR KENYA.....PLAINTIFF

VERSUS

KISAJU DEVELOPMENT TRUST.....1ST DEFENDANT

OLKEJUADO COUNTY COUNCIL.....2ND DEFENDANT

RULING

Coming up before me for determination is the Notice of Motion dated 12th April 2016 in which the Plaintiff/Applicant seeks for an order allowing it to amend its Plaint dated 27th January 2002 and filed in court on the same date in the manner and style of the draft Amended Plaint annexed and for an order deeming the draft Amended Plaint as duly filed.

The Application is premised on the grounds appearing on its face together with the Supporting Affidavit of Christopher Kagoizi Kibisu, the Plaintiff's Trust Management Officer, sworn on 12th April 2016 in which he averred that the Plaintiff is the registered trustee of all the properties of the Anglican Church of Kenya and that following the dismissal of the suit for non-attendance on 15th May 2012, the Plaintiff instructed the firm of Messrs Ochieng, Onyango, Kibet and Ohaga Advocates to take over the conduct of this suit in place of Metto & Co. Advocates. He added that the court set aside the said dismissal orders on 29th May 2015 and ordered the suit be listed for hearing within the following 3 months failing which it would stand dismissed. He further averred that the suit was eventually listed for hearing on 19th November 2015 but in the course of preparing for the said hearing the new advocates realized that it was necessary to amend the Plaint due to a number of developments that had occurred whilst the suit was pending hearing. He pointed out the developments as being the enactment of the Constitution of Kenya, 2010 under which the 2nd Defendant ceased to exist and was succeeded in title by the County Government of Kajiado, the creation of the National Land Commission and attempts by third parties to fraudulently dispose off the suit property. He averred that it was therefore necessary that the Plaint herein be amended to reflect both the changes of the law and the correct factual position relating to the dispute herein for a just, proportionate and expeditious disposal.

The Application is contested. The 1st Defendant filed the Replying Affidavit of Jean Nasuka, it's Secretary, sworn on 24th May 2016, in which she averred that the alleged leasehold interest which was granted by the 2nd Defendant to the Plaintiff was not registered, that the leasehold interest had expired,

that Chan Flowers Limited is a party in ELC No. 1897 of 2000 which is still pending before this court and that the intended amendment of the Plaintiff has been sought after a whole year.

Both parties filed their written submissions.

The court is to determine whether or not to allow the proposed amendments to the Plaintiff filed by the Plaintiff/Applicant. On that issue, the applicable law is as follows:-

Order 2 Rule 15 of the Civil Procedure Rules, 2010 provides that,

“(1) At any stage of the proceedings the Court may order to be struck out or amended any pleading on the ground that:-

a. It discloses no reasonable cause of action or defence in law.

b. Its scandalous, frivolous or vexatious; or

c. It may prejudice, embarrass or delay the fair trial of the action; or

d. It’s otherwise an abuse of the Court process and may order the suit be stayed or dismissed or judgment to be entered accordingly as the case may be.”

Going by these legal provisions, it would appear that a court has a free hand to allow the amendment of pleadings on the grounds enumerated. In the Court of Appeal case of **Eastern Bakery vs. Castelino (1958) EA 461**, it was held that amendments sought before the hearing should be freely allowed if they can be made without injustice to the other side. In this particular case, the sought after amendments are contested on the ground that the leasehold interest held by the Plaintiff/Applicant expired and that the changes in law cited by the Plaintiff/Applicant are irrelevant to this case. I consider that the question whether or not the interest claimed by the Plaintiff/Applicant in the suit property has expired or not is an issue for determination after the hearing of this suit. I further consider that the joinder of parties herein pursuant to the changes in the law is prudent on the part of the Plaintiff. Whether or not the Plaintiff has a valid claim against the enjoined parties is an issue to be determined at the main trial.

In light of the foregoing, this Application is hereby allowed. Costs in the cause.

DELIVERED, SIGNED AND DATED AT NAIROBI THIS 1ST DAY OF SEPTEMBER 2017.

MARY M. GITUMBI

JUDGE