



**REPUBLIC OF KENYA**

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

**ELC CASE NO. 105 OF 2017**

**NDOVU ESTATES LIMITED.....PLAINTIFF**

**-VERSUS-**

**PETER LEMERIA OLE NTUTU.....DEFENDANT**

**RULING**

The Application before court is dated 5<sup>th</sup> May, 2017 and is brought under order 8 Rules 3, 5 and 7 of the Civil Procedure Rules and under sections 3 and 3A of the Civil Procedure Act.

The Application seeks the leave of the honourable court to amend the plaint and put the true status of the case to reflect changed circumstances. The Applicant also seeks costs and such other relief that the court may grant.

The Application is premised on grounds outlined on the face of the application to which the application states that the Defendant/Respondent had disowned a signature on a lease agreement which he relied on to file the plaint. The Applicant engaged the service of a Forensic expert to determine whether the signature was that of the Defendant/Respondent.

The Applicant also states the amendment sought will not be prejudicial to the Respondent and will assist the court in aiming at a just and fair decision.

The Defendant/Respondent opposed the Application and has filed a Replying Affidavit. The Respondent contends that the application is not based on well founded grounds and the same is an abuse of the court process and that the same is meant to delay the hearing of the substantive suit.

When the Application came before me for hearing the parties consented to have the same disposed of by way of written submissions. The parties filed their submissions on the 13<sup>th</sup> July, 2017 and 21<sup>st</sup> July, 2017. The Applicant submitted and largely expounded on the grounds outlined on the application whereas the Respondent submission dwelt on whether the application was vexatious and an abuse of the court process.

I have read the Application and considered the submissions by learned counsel. The grounds for the grant of an Application of this nature is contained in order 8 Rule 3,5,7 and 8 of the Civil procedure Rules under this provision the test for the grant is whether the amendment sought will determine the real question between the parties and whether there exists certain errors and defects which are apparent to be rectified.

The substantive suit herein relates to a lease agreement that the parties entered. When I perused the initial

plaint filed by the Applicant the suit was entirely premised on the said Lease Agreement. The Respondent has denied that he entered into the said lease. This being the circumstance the Applicants seeks to amend the plaint in order to include a report of a document examiner he engaged to verify the authenticity of the signatures.

As I stated earlier the substance of the lease being at the heart of the suit herein I observe thus that the inclusion of the amendment sought will correctly determine the real issues that exist between the parties as envisaged under order 8 rule,3,4 and 7 which will assist the court in arriving at a just and fair decision.

Accordingly I will allow the Application dated 5<sup>th</sup> May, 2017 and order that costs be in the cause.

**DATED, SIGNED and DELIVERED** in open court at **NAROK** on this **6<sup>th</sup>** day of **OCTOBER, 2017**

**Mohammed Noor Kullow**

**Judge**

**6/10/17**

In the presence of:-

Ms Muigai holding brief for Maina Nganya for Defendant

Ms Nchoe for Otieno C.F. for the plaintiff

CA:Chuma