



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KISUMU

ELC CASE NO .80 OF 2012

ALICE CHABALAPLAINTIFF

VERSUS

TOM ONDITI MAUABI1ST DEFENDANT

PHILAFE ENGINEERING LTD.....2ND DEFENDANT

RULING

1. The Defendant filed the notice of motion dated 17th August 2015 seeking to amend their defence to introduce a counterclaim and additional parties to the counterclaim. The application is based on the seven grounds marked (a) to (g) on the notice of motion and supported by the affidavit of **Eng. Pertash A. Oloo**, a director of **Philafe Engineering Limited**, who are the 2nd Defendant.
2. The application is opposed by the Plaintiff, **Alice Chabala**, through the replying affidavit filed on 21st August 2015.
3. The application came up for hearing on the 13th April 2016 when Mr Onsongo and Mr Onyango for the Defendants and Plaintiff respectively made their verbal rival submissions.
4. The issues for determination are as follows:
 - a) Whether or not the amendment sought by the Defendants will assist the court decide on the issues before it better.
 - b) Who pays the costs.
5. The court has considered the grounds on the notice of motion, the supporting and replying affidavits plus the rival submission by counsel and come to the following determination;
 - a) That the Plaintiff first commenced her claim against **Tom Onditi Mayabi**, the 1st Defendant, through the plaint dated 22nd October 2012 seeking for a permanent injunction in respect of **Kisumu/Kasule/1584** and costs.
 - b) That the Plaintiff later amended her plaint and enjoined **Philafe Engineering Limited**, the 2nd Defendant, through the amended plaint dated 18th January 2013. The earlier prayers were retained with an additional one seeking to have the title deed held by Defendants surrendered and cancelled.
 - c) The 1st Defendant filed his statement of defence dated 15th November 2012.
 - d) That the 2nd Defendant filed their statement of defence dated 5th February 2013. The

Mr Olel for the Plaintiff/Respondent

Court: Ruling delivered in open court in presence of Mr Omondi for Onsongo for Defendant/Applicant and Mr Olel for Plaintiff/Respondent.

SM. KIBUNJA

ENVIRONMENT & LAND – JUDGE

25/5/2016