

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

E&L 476 OF 2013

PAMELA CHEBET CHOGE.....PLAINTIFF

VS

KIRWA STEPHEN BITOK.....DEFENDANT

(Application For Amendment Of Plaintiff; Application Not Opposed By Defendant; No Prejudice Will Be Caused To Defendant; Application Allowed)

RULING

This ruling is in respect of an application dated 17 February 2014 filed by the plaintiff pursuant to the provisions of Order 8 Rules 3, 5 and 7 of the Civil Procedure Rules, 2010. It is an application seeking to amend the plaint.

In the original plaint the plaintiff had pleaded that the defendant had entered into a sale agreement dated 3rd February 2012 in which the defendant transferred the land parcel Pioneer/Ngeria Block 1 (EATEC)/2068 at a consideration of Kshs. 1,300,000/= . It was pleaded that despite having paid the full consideration and the land transferred to her, the defendant has refused to vacate the premises.

In the amended plaint annexed to the application, the plaintiff has elaborated that the actual transaction was one of a loan transaction whereby the plaintiff loaned the defendant a sum of Kshs. 3,900,000/= and the defendant handed over the title to the suit land as security and executed all transfer instruments. It is pleaded that the defendant failed to pay and the plaintiff realized the security.

The application to amend is not opposed by the defendant.

A litigant is at liberty to plead his case as he wishes. Courts are ordinarily liberal when it comes to applications for amendment and will generally allow such applications unless the same will cause prejudice to the other party. I see no prejudice which will be occasioned to the defendant as this case has not yet commenced. I see no reason why the application for amendment should not be allowed. The application is hereby allowed. I direct the plaintiff to formally file and serve the amended plaint within 7 days from today. The plaintiff will however bear the costs of the application.

It is so ordered.

DATED AND DELIVERED AT ELDORET THIS 20TH DAY OF MARCH 2014

JUSTICE MUNYAO SILA

ENVIRONMENT AND LAND COURT AT ELDORET

Delivered in open court in the presence of:

Mr. J.M. Njuguna for plaintiff/applicant

Mr. Aseso holding brief for M/s Andambi for defendant/respondent

