



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET**

**E&L NO. 326 OF 2013**

**KAMUNGEI INVESTMENTS.....PLAINTIFF**

**VS**

**S.I. MACHARIA DISTRICT COMMISSIONER**

**KOIBATEK DISTRICT.....1ST DEFENDANT**

**PIUS LEBELYO SENIOR CHIEF**

**ELDAMA RAVINE LOCATION .....2ND DEFENDANT**

**HON. ATTORNEY GENERAL .....3RD DEFENDANT**

***(Application for amendment of plaint; plaintiff wishing to amend the description of the parties and add new prayers; no reason to disallow the application; application allowed but plaintiff to bear the costs)***

**RULING**

This suit was instituted by way of a plaint filed on 5 June 2013. The plaint as originally pleaded, stated that the plaintiff is a business name registered under the Business Names Act, CAP 499 Laws of Kenya. It is pleaded that the plaintiff is the owner of the land parcel described as Plot B Block 1/585 in Eldama Ravine Township on which land is developed a hotel known as Kamungei Hotel. It is pleaded that as the plaintiff was carrying on construction on the suit land, the 1st and 2nd defendants jointly moved into the plot and ordered the plaintiff to stop all on-going construction without any justifiable reason. In the original suit, the plaintiff wanted the defendants permanently restrained from any further interfering on the suit land.

Through an application dated 4 July 2014, which is the subject application, the plaintiff has sought leave to amend the plaint. The plaintiff wishes to amend its description to now state that the plaintiff is one Musa Kiprop T/A Kamungei Investments. He also wants to alter the description of the 1st and 2nd defendants. In the original plaint, the 1st defendant is S.I Macharia, who was described as the District Commissioner, Koibatek District. The 2nd defendant was described as the Chief, Eldama Ravine Location. In the proposed amendments, the plaintiff wishes to have the 1st defendant as the Sub-County Commissioner, and the 2nd defendant as the Senior Chief, Eldama Ravine Location. He also wishes to delete some particulars of interference that he had pleaded in the original plaint against the original defendants. He further wishes to amend the prayers to include two additional prayers, being a declaration

that he is the lawful owner of the suit land, and a declaration, that the interference of the suit land by the defendants is unlawful.

The application is not opposed by counsels for the defendants.

It will be discerned that the application is one for amendment of plaint. Courts are usually liberal when it comes to amendments unless the same can cause injustice or prejudice to the parties. On my part, I do not see what prejudice the defendants stand to suffer if the amendments are effected. I further recognize that each party is entitled to plead his case as he wishes. If the plaintiff wishes to plead his case differently, that is his choice, and given that I do not see any hardship that the amendments will cause to the defendants, I have no reason to deny the plaintiff the leave sought to amend the plaint.

I therefore allow the application for leave to amend. I direct that the amended plaint be filed within the next 14 days and be served in the usual manner.

The plaintiff will however bear the costs of the application.

It is so ordered.

**DATED AND DELIVERED AT ELDORET THIS 9TH DAY OF JULY 2014**

**JUSTICE MUNYAO SILA**

**ENVIRONMENT AND LAND COURT AT ELDORET**

*Delivered in the presence of:*

*N/A for M/s Nyekwei & Co for plaintiff/applicant.*

*N/A for State Law office for defendants/respondents.*