



**REPUBLIC OF KENYA.**

**IN THE HIGH COURT OF KENYA AT KITALE.**

**ENVIRONMENT & LAND COURT CASE NO. 70 OF 2013.**

**CENRIVA TRADERS LTD. ::::::::::::::::::::::::::::::::::::::: PLAINTIFF.**

**VERSUS**

**THE COUNTY GOVERNMENT OF TRANS NZOIA ::::::: DEFENDANT.**

**R U L I N G.**

1. The applicant filed an amended amended notice of motion seeking an order preserving the prevailing status quo regarding its occupation of business premises standing on LR. No. 2116/48/IV situated within Kitale town. The applicant had entered into a tenancy agreement with County Council of Nzoia the predecessor of the present respondent. Notice for termination of tenancy was initially 6 months but it was later changed to 2 years owing to the nature of business operated by the applicant.
2. On 2/5/2013 the respondent issued a notice to the applicant requiring it to vacate the premises by 30th June, 2013. This prompted the applicant to file a suit as well as an application seeking to preserve the prevailing status quo until determination of the suit. The suit was initially filed against the Transition Authority. The applicant later amended its notice of motion and plaint bringing in a second party. The applicant again amended its plaint and notice of motion which brought in the respondent.
3. The applicant contends that the notice given to it was contrary to what was contained in the tenancy agreement and that orders preserving the status quo should be given pending the hearing and determination of the suit. In its suit, the applicant is seeking a declaration that the notice issued by the respondent was illegal.
4. The respondent opposed the applicant's application based on the grounds of opposition filed in court on 9/4/2014. The respondent contends that the application and plaint were amended without leave of court and that the respondent was joined to this suit without leave of court.
5. I have gone through the applicant's application as well as the grounds of opposition. The issue which arises for determination is firstly whether the applicant's application as well as plaint were filed without leave of court and secondly, whether the respondent was properly joined as a party to this suit. A party is allowed to amend his pleadings once without leave of court before pleadings close. The applicant first amended its pleadings on 12/9/2013. The applicant again amended its pleadings on 10/9/2013.

This second amendment was without leave of the court. The respondent was also brought into the suit without leave of court. Mr. Kiarie for the applicant argued that section 19 (2) of the Environment and Land Court provides that the court should not be bound by the procedure laid down by the Civil Procedure Act. Mr. Kiarie further argued that the court should not be bogged down by technicalities but should instead dispense substantive justice.

6. Professor Sifuna on the other hand argued that mandatory procedures should be followed and cannot merely be taken as procedural technicalities. He urged the court to strike out the application as well as the suit itself. I have considered the application as well as the submissions by counsel for the parties herein. The Civil Procedure Rules provide that before amendment is done leave to do so has to be obtained. This is the case where substitution of parties to a suit is required. The section referred to by Mr. Kiarie has since been amended. The Environment and Land Court is bound by rules laid down in the Civil Procedure Rules. The amendment to the Environment and Land Court Act was effected on 12/7/2012. The rule requiring that leave be sought before amendment or substitution is done is very fundamental and cannot be said to be just

a procedural technicality which can be overlooked.

7. The applicant's application of 10/9/2013 as well as the plaint amended on the same day were filed without leave of the court. I therefore find that the amendments and introduction of the respondent was done unprocedurally. The application dated 10/9/2012 as well as the amended plaint dated 10/9/2013 are hereby struck out with costs to the respondent.

It is so ordered.

**[Dated, signed and delivered at Kitale on this 2nd day of July, 2014.]**

**E. OBAGA.**

**JUDGE.**

In the presence of Mr. Kiarie for plaintiff/applicant and Professor Sifuna for defendant/respondent. Court Clerk – Kassachoon.

**E. OBAGA.**

**JUDGE.**

**2/7/2014.**