



**REPUBLIC OF KENYA**

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

**CIVIL SUIT NO. 179 OF 2013**

PERIS WACERA KAMOCHHE.....PLAINTIFF/RESPONDENT

VERSUS

THEGENGE ENTERPRISES LIMITED.....1ST DEFENDANT

JOHN M. NGUNJIRI T/A TANGO AUCTIONEERS.. .....2  
ND DEFENDANT

**RULING**

By a plaint dated 30<sup>th</sup> May, 2007 the applicant Peris Wacera Kamoche, instituted this suit against the respondents, Thegenge Enterprises Limited and John M. Ngunjiri T/A Tango Auctionees seeking, among other orders, an order that the defendants be evicted from Nakuru Municipality Block 5/ 96 ("suit premises") and the levy for distress be found illegal, perpetual injunction restraining the defendants, their servants and /or agents from taking possession of the butchery and hotel premises or giving them to a third party or in any way interfering with the plaintiff's quiet possession and enjoyment of the suit premises, the defendants compelled to reinstate the plaintiff back to the suit premises and an order against the defendants for return of the plaintiffs goods.

It is this plaint that the applicants now wish to amend to include the costs of the goods and items destroyed and /or lost on the night of 17<sup>th</sup> November, 2007 when the suit premises was set ablaze by the defendants. The time within which to amend the pleadings without leave having expired, the applicants have brought the application dated 6<sup>th</sup> March, 2013 seeking leave of the court to amend the plaint.

In their grounds of opposition dated 5<sup>th</sup> April, 2013 the defendants have objected to the proposed amendments. In a nutshell they state that the applicant seeks to substantially change his claim, the value of the goods is highly exaggerated based on imaginary figures and the applicant never reported these actions to the Police.

I have heard the rival submissions. From the outset, I must state that I do not see what prejudice the defendants will suffer if the plaint is amended. The power to amend pleadings is donated by the civil procedure Act section 100 and the civil procedure rules. The court of appeal in *Central Kenya Ltd –Trust Bank Limited (2002) 2 E.A. 365* held inter alia that;-

***“...a party would be allowed to make such amendments of pleadings as were necessary for determining the real issue in controversy or avoiding multiplying of suits...”***

In the court of appeal's view, a court of law is enjoined to be magnanimous in allowing amendments so as to allow parties ventilate the real issues in controversy. I agree with the reasons of the above decision that amendment of pleadings should be allowed with as great latitude as would allow the court to deal with the real controversy. In the present case, the plaintiff wishes to introduce a claim for damages allegedly occasioned by the defendants. I think it's within their right to do so. In the circumstances therefore, I order that the plaintiff be granted leave to amend her plaint in terms of the proposed draft plaint by filing and serving the same within the next twenty one (21) days from the date of this ruling. The defendants are also granted corresponding leave to file an amended defence if they deem it necessary within Fourteen (14) days of service of the amended plaint. Costs in the cause. It is so ordered.

**Dated, signed and delivered on this 4th day of October 2013.**

**L N WAITHAKA**

**JUDGE.**

**PRESENT**

Ms Abongo holding brief for Mr Wachira Mbuthia

Mr Kahiga for the Defendant

Stephen Mwangi : Court Clerk