



**Njiiri v Zambezi Hospital Limited & 2 others (Environment & Land Case E033 of 2022) [2024] KEELC 4142 (KLR) (30 April 2024) (Ruling)**

Neutral citation: [2024] KEELC 4142 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE E033 OF 2022**

**JE OMANGE, J  
APRIL 30, 2024**

**BETWEEN**

**RUTH NYAMBURA NJIIRI ..... APPLICANT**

**AND**

**THE ZAMBEZI HOSPITAL LIMITED ..... 1<sup>ST</sup> RESPONDENT**

**PYRAMID AUCTIONEERS ..... 2<sup>ND</sup> RESPONDENT**

**DENNIS WAFULA ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. In the Notice of Motion application dated the 29<sup>th</sup> February, 2024 the Applicant sought the following orders:
  - i. Spent
  - ii. That Zambezi hospital be substituted with Dr. Geoffrey Mutuma
  - iii. That the court grants leave to the 1<sup>st</sup> and 2<sup>nd</sup> Defendant to amend its defence and counterclaim and the annexed amended Defence and Counterclaim be deemed to be duly filed subject to payment of required court fees.
  - iv. That court issues such orders as will facilitate a Just and fair determination of the case.
2. The application is brought on the grounds that, the lease agreement is between Ruth Njiiri the 1<sup>st</sup> Defendant and Dr. Geoffrey Mutuma. That Dr Geoffrey Mutuma wrongly instituted the suit in the name of Zambezi Hospital. That it is only just and fair that Zambezi Hospital be substituted with Dr. Geoffrey Mutuma so that the court can be able to determine the real issues in controversy.



3. The application is supported by the affidavit of the 1<sup>st</sup> Defendant in which she depones that the lease agreement, a copy of which she annexes was signed by Dr. Geoffrey Mutuma and not Zambezi Hospital. The Defendant who was served with the application did not file a response.
4. Joinder of parties is prescribed under Order 10 Rule 2 of the *Civil Procedure Rules* thus:
  1. Where a suit has been instituted in the name of the wrong persons as plaintiff, or where it is doubtful whether it has been instituted in the name of the right plaintiff, the court may at any stage of the suit, if satisfied that the suit has been instituted through a bonafide mistake, and that it is necessary for the determination of the real matter in dispute to do so, order any other person to be substituted or added as plaintiff upon such terms as the court thinks fit.
  - (2) The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit, be added
5. I find that given that the lease document was executed in the name of Dr. Geoffrey Mutuma he is a necessary party in this suit. As such the application for substitution is merited and is allowed as follows;
  - a. Zambezi hospital is to be substituted with Dr. Geoffrey Mutuma.
  - b. That the Defendants are to file and serve an amended defence and counterclaim within 21 days from today.
  - c. That the Plaintiff is to file any documents in response within 21 days of service.
  - d. Costs of the application are to be in the cause.

**RULING, DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS ON 30TH APRIL, 2024.**

**JUDY OMANGE**

**JUDGE**

In the Presence of:

Mr. Nyakundi for 1<sup>st</sup> and 2<sup>nd</sup> Defendant-Court Clerk: Steve

