



**Kenyatta v Nyangweso (Environment & Land Case 232 of 2014)
[2023] KEELC 18189 (KLR) (20 June 2023) (Ruling)**

Neutral citation: [2023] KEELC 18189 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISII
ENVIRONMENT & LAND CASE 232 OF 2014**

**M SILA, J
JUNE 20, 2023**

BETWEEN

JOYCE SARANGE KENYATTA PLAINTIFF

AND

LUCAS NYAMBEGERA NYANGWESO DEFENDANT

RULING

1. The application before me is that dated 14 February 2023 filed by the defendant. It seeks leave to amend the defence. The plaintiff had filed Grounds of Opposition to oppose the application, but Mr. Bosire, learned counsel for the plaintiff, withdrew the same when the matter came up for hearing inter partes.
2. I have gone through the application and looked at what the defendant seeks to amend. I observe that the suit was commenced through a plaint filed on 18 June 2014. In the plaint, the plaintiff pleaded to be the registered owner of the land parcel Kisii Municipality/Block I/595, having purchased it from a third party on 11 November 2013, and subsequently issued with a Certificate of Lease. She commenced construction in the year 2014, but while construction was on going, on 28 May 2014, the defendant/applicant came to the site and demanded that construction stops. On 29 May 2014, the defendant/applicant came accompanied by police and chased away the workers of the plaintiff and confiscated some tools. In the suit, the plaintiff seeks to have the applicant permanently restrained from the suit land and damages.
3. On 4 July 2016, the applicant filed his defence and included a counterclaim. He contended that the land parcel Kisii Municipality/Block I/595 does not exist. He pleaded that he had earlier purchased a Plot No. 48G in the year 1990 and took possession. In the year 2006, he discovered that some fraudulent people had subdivided the plot 48G into five (sic) portions identified as U,V,W,X. He nevertheless continued owning the plot. He averred that subsequently the plots V,W,X were found to be on a road reserve and the plot 'U' was given a parcel number Kisii Municipality/Block 1/1022, which he pleaded to be the same land in dispute. In the counterclaim, he prayed for orders of eviction, demolition of the



buildings put up by the plaintiff, a permanent injunction to restrain the plaintiff from the said land, general damages, costs and interest.

4. Through an application dated 23 October 2020, the applicant filed an application to amend the counterclaim, inter alia to join the County Government of Kisii, and the Land Registrar, Kisii County, as parties. In opposing the application, the plaintiff argued that the amendments were going to introduce a claim that was time barred. The court (Onyango J) was persuaded by the arguments of the plaintiff and dismissed the application to amend the counterclaim.
5. The prayer in the present application is for leave to amend the defence and I have gone through what the defendant proposes to amend. I however observe that there are proposed amendments to both the defence and other amendments to the counterclaim. The proposed amendments to the defence intend to plead that the suit property was hived off the Plot 48G, which the defendant claims to have purchased in the year 1990, and which was later subdivided to bring forth the Plots 'U' and 'Y'. His contention is that what the plaintiff claims to be Kisii Municipality Block 1/1022 is actually the Plot 'U'. He adds that he was issued with an allotment letter to this plot and is awaiting issuance of title. In the counterclaim, the prayer is to have the plaintiff ordered to vacate and give vacant possession of this Plot 'U'.
6. . I had some bit of hesitation when I noted that there is also proposal to amend the counterclaim whereas the application only seeks for leave to amend the defence. I think the defendant ought to have been more precise in the drafting of his application so that he also includes leave to amend the counterclaim. But be that as it may, it is clear to me what the defendant intends to do, that is, plead that what the plaintiff asserts to be the plot Kisii Municipality/Block I/ 525 is actually this plot 'U', which the defendant wishes to assert to be his plot. I think the causes of action are intertwined and is best that they be heard together. I see no prejudice to the plaintiff.
7. I will therefore allow the application. The defendant is at liberty to proceed to amend both defence and counterclaim within the next fourteen (14) days. I will however award costs of the application to the plaintiff, for the defendant ought to have made the correct pleadings in the first instance. Nowhere is it alleged that the proposed amendments were precipitated by any action of the plaintiff, or upon facts subsequently received, after the original defence had been filed.
8. Orders accordingly.

DATED AND DELIVERED AT KISII THIS 20 DAY OF JUNE 2023

JUSTICE MUNYAO SILA

JUDGE, ENVIRONMENT AND LAND COURT

AT KISII

