



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT BUNGOMA**

**LAND AND ENVIRONMENT CASE NO. 229 OF 2014**

**NAOMI O. OKIBO .....PLAINTIFF**

**VERSUS**

**FRANCIS W. ALMASI .....DEFENDANT**

**RULING**

[1] The Notice of Motion before the court is brought under Rule 3, 5 and 8 of the Civil Procedure Rules 2010. The applicant prays for leave to amend the defence. He has annexed a copy of the amended defence and prays that the same be deemed as filed. He supports it with his application dated 22<sup>nd</sup> August 2015 in which he states that the amendment will bring out the actual issues.

[2] The application is opposed by the respondent who filed his statement of Grounds of Opposition under Order 51 Rule 14 (1) (c) of the Civil Procedure Rules 2010. The respondent argues that the application is filed contrary to the provisions of Section 7 of the Limitation of Actions Act Cap 22 Laws of Kenya since the alleged agreement for sale was executed on 16/4/1997 and that the said amendment offend Order 8 Rule 7 and Order 57 Rule 13(2) of the Civil Procedure Act 2010 and that the same is an abuse of the process of the court.

[3] I have carefully considered the application of the applicant and the reply of the respondent. The suit before me is for an injunction against the defendant. The defendant now wants to amend his defence and include a counterclaim praying that the suit land be transferred to him. I feel that in the interests of justice, the defendant should be allowed to file his amended defence. The plaintiff shall also be allowed to file a reply to the counterclaim if he so wishes within fourteen days.

This is necessary so that the real issue between the parties can be determined. All the legal issues as the limitation and other relevant legal issues can be dealt with at the hearing hereof.

The upshot of this ruling is that the application herein is allowed as prayed. Costs shall be in the cause.

Dated, signed and delivered at Bungoma this 27<sup>th</sup> day of July 2016

**S.MUKUNYA - JUDGE**

**In the presence of**

Gladys court assistant

Mr. were h/b for Situma for defendant applicant

Miss Bett for Mr. Onchiri for the respondent