

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MALINDI

CIVIL SUIT 79 OF 2006

STEPHEN RAPHAEL
GARAMA.....PLAINTIFF

VERSUS

ROBERT BAYA MRAMBA & 9
OTHERS.....DEFENDANTS

RULING AND DIRECTIONS

1. The Plaintiff, claiming to be the registered owner of the land parcel described as KILIFI/JIMBA/85 located in Watamu brought this suit seeking vacant possession against the defendants. He described the defendants as trespassers who unlawfully invaded and have continued to remain on the land despite his persistent entreaties.
2. With the court's leave, the defendants filed a Further Amended Defence and Counterclaim which is neither dated nor signed. Nor is there evidence that the filing fees in respect of the said Further Amended Defence and Counterclaim were paid as ordered by the court on 28th March, 2011. Order 2 rule 16 of the Civil Procedure Rules provides that:-

“Every pleading shall be signed by an advocate, or recognized agent...or by the party if he sues or defends in person.”
3. Although the plaintiff did file his Further Amended Defence to the Counterclaim on 20th March, 2011, I think it is necessary for the Defendants' pleadings to be regularized before judgment can be pronounced on the dispute. While this may cause some delay, the court is wary of proceeding on the basis of what may well be an incompetent counterclaim.
4. I direct, therefore, that the defendants do file within 14 (fourteen) days of today's date, a duly signed and dated Further Amended Defence and Counterclaim corresponding with the approved draft annexed to the Chamber Summons dated 10th November, 2010. Additionally, the fees payable on the said counterclaim are to be assessed and paid by the Defendants. Thereafter, the matter will be mentioned on 25th June, 2012 to confirm compliance and to give a fresh judgment date.
5. It is regrettable that the above anomalies have come to light after the close of the hearing. This is partly due to the fact that this case had been partly heard by my predecessor Omondi J. while leave to amend was granted to the Defendants after the evidence of PW1 had been taken.

Delivered and signed this 30th day of **May, 2012** in the presence of Mr. Angima for the defendants. Mr. Lughanje for plaintiff.

C. W. MEOLI

JUDGE

COURT- Today's costs to the plaintiff.

C. W. MEOLI

JUDGE