

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
CIVIL CASE NO. 315 OF 2000

BAJABER LIMITED.....PLAINTIFF

=VERSUS=

KENYA REVENUE AUTHORITY.....DEFENDANT

RULING

By this application dated 13th October 2010 the Defendant seeks orders to allow it to amend its statement of defence dated 14th August 2009 to include a counter-claim as against the Plaintiff. Annexed to the application is the intended Amended Defence and counter-claim. **Mr. Githaiga** Advocate argued the application on behalf of the Applicant which **Mr. Asige** strenuously objected to the same on behalf of the Plaintiff.

I have given very careful consideration to the arguments advanced both for and against this application. Unlike the earlier application dated 7th December 2009 in which the Defendants sought to enjoin a third-party to the suit, in this present application the prayer is merely to amend the defence to include a counter-claim. The parties to the suit will remain the same. As a general rule of civil law amendments to pleadings are allowable at any time before judgement is entered in the suit. Again as a general rule such amendments will not ordinarily prejudice the other party as they will have ample opportunity to respond accordingly. This hearing is still in its infancy. Only one witness has testified. I have looked at the proposed amendments and counter-claim. What they seek to do is to amalgamate all the prayers sought to enable closure to be obtained at the end of the suit. This I believe will not cause any undue hardship and/or prejudice to the Plaintiffs. The essence of the suit remains the same that is the question of Title or ownership of the suit land. As such I do allow this present application in terms of prayer (2) thereof. The Defendant to file and serve its Amended Defence and counter-claim within 14 days of today's date. The Plaintiffs are at liberty to file and serve their reply within 14 days of such service and the Defendants to have 14 days to file and serve their reply to any defence to the counter-claim. Thereafter since only one witness has testified in this case the matter to proceed for hearing before the Land Division of the High Court. Costs in the cause.

Dated and Delivered in Mombasa this 18th day of November 2011.

M. ODERO
JUDGE

In the presence of:
Mr. Asige for Plaintiff
No appearance by Defendant