

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU

Civil Suit 90 of 1997

KAMAU KANIA.....PLAINTIFF

VERSUS

PATRICK RERIMOI.....1ST DEFENDANT

MARY NDUTA KAGWIMA.....2ND DEFENDANT

RULING

The 2nd defendant seeks by her chamber summons dated 6th May 2009 and brought under **Order 6A Rules 3 & 9** of the **Civil Procedure Rules** leave of this court to amend her defence and file a counter claim. She claims that this has been necessitated by the plaintiff's fraudulent acts of December 2006 which led to the demolition of her house. She intends to counterclaim for the value of the demolished house and loss of household items.

In his grounds of opposition the plaintiff opposes the application inter alia as being an afterthought and bad in law.

Applications for amendment of pleadings especially those coming before the hearing are invariably allowed if they can be made without injustice to the other side and there is no injustice if the other side can be compensated by an order of costs – **Eastern Bakery Vs Castelino [1958] EA 461**.

In this case I agree with counsel for the 2nd defendant that the other points raised in the grounds of opposition are points that can be raised in the reply to defence and defence counter claim. I cannot see any prejudice that will be caused to the plaintiff which cannot be remedied by an order of costs. Consequently I allow this application and order that the 2nd defendant has leave to file her amended defence within fifteen (15) days of the date hereof. The plaintiff and the 1st defendant have corresponding leave to amend their pleadings within fifteen (15) days of service of the 2nd defendant's amended defence and counter claim. The plaintiff shall have costs of this application against the 1st defendant.

DATED and delivered this 18th day of November, 2009.

D. K. MARAGA

JUDGE.