

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

(MILIMANI LAW COURTS)

CIVIL SUIT 1251 OF 2002

GUCOKANIRIRIA KIHATO TRADERSPLAINTIFFS

VERSUS

THE HON. THE ATTORNEY GENERALDEFENDANT

RULING

Amendment of pleadings is aimed at allowing a litigant to plead the whole claim he/she feels he/she is entitled to make in respect to his/her cause of action and is normally allowed to make such amendment of pleadings as are necessary for determining real issues in controversy, provided there is no undue delay, no new or inconsistent cause of action is being introduced, no vested interest or accrued legal right is affected and that no prejudice will be caused to the opposite party.

The amended draft defence intends to introduce in the case the letter dated 13th February 2007 which alleges the Plaintiff's intention to invade the suit property, the absolute proprietary interest of the Applicant in the suit property and the prayer to injunction against the Plaintiff or otherwise from threatening to invade the suit property.

In view of the fact the letter threatening the Applicant with invasion to the suit land is dated 13th February 2007 and that this application was filed in Court on 27th February 2007, I cannot say there is an undue delay.

In the original defence, the Applicant had only prayed for the dismissal of the suit but with the threat of eviction from the suit land by use of force as envisaged in the letter of 13th February 2007 – EP3, the element of a restraining order is being introduced.

That the letter was not on the Plaintiff's letterhead or that the Plaintiff is not a member of Mau Mau War Veterans or that the letter was written by persons unrelated to the Plaintiff is neither here nor there given the sensitive nature of land disputes in this part of Kenya.

There is no new or inconsistent cause of action being introduced in the pleadings and there are no or convincing averments that the amendments being sought by the Applicant will result in injustice or prejudice to the Plaintiff.

In my discretion this is one application where the Plaintiff can properly and conveniently be compensated in costs.

I allow the application and give the Defendant seven (7) days from today to formally file the amended defence. Costs of the application either agreed or taxed will be paid to the Plaintiff.

Delivered and dated at **Nairobi** this 15th day of March 2007

D. K. S. AGANYANYA

JUDGE