



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KITALE

ELC NO. 21 OF 2011

ESTATE OF JOHN MWENESI ADULU.....PLAINTIFF

(REPRESENTED BY EBBY MUSIMBI MWENESI)

VERSUS

SAUL EGUNZA BUNYALI.....1ST DEFENDANT

EBRAHIM OMWENYI AMBWERE.....2ND DEFENDANT

HARRY CITY AMBWERE.....3RD DEFENDANT

WEST KENYA SUGAR COMPANY.....4TH DEFENDANT

PASSELS SIMIYU WANYAMA.....5TH DEFENDANT

RULING

1. The application dated 14/10/2020 and filed in court on 26/11/2020 has been bought under **Section 1A, 1B, 3 & 3B** of the **Civil Procedure Act** and **Order 8 Rules 3, 5 and 7, Order 51 Rule 1** of the **Civil Procedure Rules, Article 159** of the **Constitution of Kenya 2010**. The 4th defendant/applicant seeks the following orders:-

(1) ...spent

(2) That the honourable court be pleased to grant leave to the 4th defendant/applicant to amend its defence and counterclaim.

(3) That if prayer 1 is allowed, the applicant be granted leave to file the proposed re-amended defence and counterclaim within seven (7) days thereof.

(4) That costs of this application be provided.

2. The application is supported by the affidavit sworn on 4/11/2020 of **Duncan Obwawo** the Human Recourse and Administrative Manager of the 4th defendant. The grounds upon which the application is made are that the 4th defendant conducted due diligence prior to purchase of the suit land and ascertained that the 2nd and 3rd defendants had a good title capable of being passed on to the 4th defendant and that it was therefore transferred to the 4th defendant who sold it to the 5th defendant. Consequently the 4th defendant desires to amend its defence to include those matters and also a counterclaim against persons or offices that made certain actions omissions and or performed actions that led to its registration as proprietor as they should in its opinion be parties in the suit.

3. The instant application is not opposed and this court upon perusing the proposed amendments finds that they are merited.

4. The application dated 14/10/2020 is therefore granted as prayed in terms of **Prayers Nos. (2) and (3)** thereof. The applicant shall file its amended defence and amended counterclaim and serve it upon all parties in this suit within **14 days**. Any responses thereto by any party shall be filed and served within **14 days** of the last date on which service of the amended defence and amended counterclaim is due. This suit shall be mentioned on **10/3/2021** for fixing a hearing date. The costs of the application shall be in the cause.

It is so ordered.

Dated, signed and delivered at Kitale via electronic mail on this 26th day of January, 2021.

MWANGI NJORGE

JUDGE, ELC, KITALE