



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT MERU**

**ELC CASE NO. 114 OF 2011**

**REGISTERED TRUSTEE GOSPEL OF GOD CHURCH ..... PLAINTIFF**

**VERSUS**

**ELIAS RIMBERIA MBOROTHI ..... 1<sup>ST</sup> DEFENDANT**

**ZAVERIO NGURU MBOROTHI ..... 2<sup>ND</sup> DEFENDANT**

**MOSES KAMUNDI ..... 3<sup>RD</sup> DEFENDANT**

**GEDIEL KIRIMI ..... 4<sup>TH</sup> DEFENDANT**

**FRANCIS MUCHERU ..... 5<sup>TH</sup> DEFENDANT**

**REGISTERED TRUSTEE, GOSPEL OF GOD**

**CHURCH INTERNATIONAL ..... 6<sup>TH</sup> DEFENDANT**

**NORA NTUI MUTAI ..... 7<sup>TH</sup> DEFENDANT**

**THE LAND REGISTRAR, MERU ..... 8<sup>TH</sup> DEFENDANT**

**THE HONOURABLE ATTORNEY GENERAL ..... 9<sup>TH</sup> DEFENDANT**

**RULING**

1. This ruling is in respect of the application filed on 2.7.2018 by the 3<sup>rd</sup>, 5<sup>th</sup> and 6<sup>th</sup> defendants, where the applicants are seeking leave to amend their statement of defence to include a counterclaim and to enjoin the registrar of societies as the intended 2<sup>nd</sup> defendant in the counter claim.
2. Applicants have availed annexure “MNKI” which is a resolution of the 6<sup>th</sup> defendant indicating their desire to bring forth this amendment.
3. The application was argued orally on 26.7.2018. Counsel for the applicant avers that he took over from the previous advocate recently. He avers that a party who comes to court ought to be allowed to ventilate his case and that the applicants have approached the court early enough before plaintiffs could close their case. Applicants aver that the amendment will enable the court to effectively adjudicate on the issues in controversy.
4. The application is opposed by plaintiff’s who avers that the application is a delaying tactic and that the applicants have been making so many applications.
5. I have weighed all the arguments raised herein. In the case of **Daniel Ngatia & another vs K-Rep Bank Ltd, Nairobi Milimani High Court case no. 409 of 2010**, reference was made to the case of **Eastern Bakery vs Castelino (1958) EA 461** where it was stated that **“It will be sufficient for purposes of the present case to say that amendments to pleadings sought before the hearing should be freely allowed, if they can be made without injustice to the other side and that there is no injustice if the other side can be compensated by costs .....”**.
6. In the case of **Maria Rosita Gardozo vs Robert Kibagendi Otachi & another (2013) eKLR**, the court of appeal observed that **“The**

**overriding consideration in an application for leave is whether the amendments are necessary for the just determination of the controversy between the parties .....**”.

7. Firstly, I note that although this case was filed in 2011, the dispute or the wrangles appear to have arisen more than 38 years ago in 1985. The case is old, the dispute is older. Allowing amendments of pleading at this stage will only delay the suit further.

8. Secondly, I note that the hearing of the case has commenced and plaintiff’s case is underway. It will certainly be prejudicial to the plaintiff’s case if defence is allowed to not only amend their pleadings but to bring forth a counterclaim at this stage.

9. Thirdly, I find that as noted by plaintiff’s counsel, defence side appear to be making numerous applications. This year alone, I have delivered two rulings in respect of applications made by defence (see ruling of 28.2.2018 and 18.4.2018). This matter was scheduled for hearing on 26.7.2018 but the hearing stalled because of this application. The trial ought to proceed instead of hearing so many applications.

10. This court has a constitutional mandate to ensure that justice is not delayed as per article 159 (2) (b) of the constitution which states that **“justice shall not be delayed”**.

11. My conclusion is that the proposed amendments will cause injustice to plaintiff’s side and will delay the matter further. In the circumstances the application dated 2.7.2018 is disallowed with costs to plaintiff.

**DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS DAY OF 3<sup>RD</sup> OCTOBER, 2018 IN THE PRESENCE OF:-**

C/A: Galgalo/Faith

Mugo for plaintiff

Muriithi for 1<sup>st</sup> and 2<sup>nd</sup> defendant Miss Njenga for 3<sup>rd</sup>, 5<sup>th</sup> and 6<sup>th</sup> defendants

Kiango for Attorney General for 8<sup>th</sup> and 9<sup>th</sup> defendants

**HON. LUCY. N. MBUGUA**

**ELC JUDGE**