



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT BUNGOMA**

**ENVIRONMENT AND LAND COURT CASE NO. 303 OF 2013**

*[Formerly Chief Magistrate's court civil case no. 621 of 2009]*

JOSEPHAT DOE OKIRIA ..... PLAINTIFF/APPLICANT

VERSUS

LUDOVICUS ORIAMA OKITOI ..... 1<sup>ST</sup> DEFENDANT/RESPONDENT

FAUSTINO OPURU OJULOTO ..... 2<sup>ND</sup> DEFENDANT/RESPONDENT

**RULING**

[1]. The applicant brings his application and quotes no rules of the Civil Procedure. He however seeks for leave to amend his written statement of defence and counter claim. He annexed a draft further amendment defence and applied for it to be admitted and be deemed part of the pleadings subject to payment of court fees, if any. The facts giving rise to the amendment are that fresh facts have emerged which were earlier not available to the defendant/applicants. He argues that the amendment will effectively address issues of fraud pleaded in the counter claim and set out appropriate reliefs hereof.

[2]. The respondent filed grounds of opposition under Order 51 Rule 14 (1) of the Civil Procedure Rules 2010. The main thrust of the opposition is that the application is geared towards rendering the site visit conducted on 4.12.15 an academic exercise.

[3]. In his argument, Mr. Ikapel Learned counsel for the applicant stated that he wanted to amend his statement of claim under Order 83 (1) which allows amendment at any time, subject to obtaining leave when pleadings are closed. He argued that the pleadings do not seek to change the subject matter. That the amendments they are seeking were not within the plaintiff's knowledge when the suit was filed. That fresh and important issues arose in 2008. He argued that if they do not raise the issue now through amendment, they will not be able to raise them later. He denied that they wanted to make the site meetings an academic exercise. He stated that the applicant has not made that site visit an issue herein.

[4]. Miss Barasa, learned Counsel for the respondent argued that the applicants are introducing new evidence after 10 years. She argued that this is malice on the plaintiff's part because the surveyors report favors their client.

[5]. I have carefully considered the argument of applicant and the response by the respondent. I have also perused the proposed amendment by the applicant. The issues raised herein can be replied to, by the respondent through a reply to the amendments. I cannot see any prejudice that will be suffered by the respondent in allowing this amendment. At least none was proved to me by the respondent. In land matters where possible, all the issues must be presented to the court, for them to be determined once and for all by the court.

I will allow the amendment to be made. The applicant's copy of the amendment in the court file shall be deemed as filed, subject to the payment of court fees. The respondent shall have 21 days to reply to those amendment if he so wishes. The costs of this application shall abide by the outcome of this suit.

IT IS SO ORDERED.

**DATED at BUNGOMA this 11<sup>th</sup> day of May 2016**

**S. MUKUNYA**

**JUDGE.**