



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT NAIROBI**

**ELC 1218 OF 2013**

**VIJAY HANSPAL (suing as the son and legal representative  
of the late INDERJIT SINGH HANSPAL**

**VERUS**

**JASPRIYA KAUR HANSPAL.....1<sup>ST</sup> DEFENDANT**

**SACHNA KAUR HANSPAL.....2<sup>ND</sup> DEFENDANT**

**(Being sued as the daughters and legal representatives of the estate of the late DAVINDER SINGH HANSPAL)**

**RULING**

1. This is the notice of motion dated 13<sup>th</sup> June 2020 brought under Section 100 of the Civil Procedure Act (Cap 21 Laws of Kenya) order 1 rule 1, order 8 rule 3(1) and (2) of the Civil Procedure Rules 2010 and all other enabling provisions of the law.

2. It seeks orders:-

***(1) Spent.***

***(2) That the defendant/applicant be granted leave to amend the defence and counter claim as set out in the draft amended statement of defence and counter claim herein annexed to the affidavit in support of this application.***

***(3) That the defendants/applicants file and serve the amended statement of defence and counterclaim.***

***(4) That the costs of this application be in the cause.***

3. The grounds are on the face of the application and are set out in paragraphs (a) to (h).

4. The application is supported by the affidavit of Jaspriya Kaur Hanspal, legal representative of the Estate of Davinder Singh Hanspal sworn on the 13<sup>th</sup> June 2020.

5. The application is opposed. There is a replying affidavit sworn by Vijay Hanspal, the plaintiff/respondent sworn on the 29<sup>th</sup> June 2020.

6. On the 6<sup>th</sup> July 2020 the court directed that the application be canvassed by way of written submissions. The plaintiff/respondent has filed his submissions dated 9<sup>th</sup> July 2020. It appears the defendants/applicants did not file theirs. Be that as it may I will rely on the grounds to the notice of motion and the supporting affidavit.

7. I have considered the notice of motion, the grounds and the supporting affidavit. I have also considered the replying affidavit and the plaintiff's/respondent's submissions. The issue for determination is whether this application is merited.

8. **Order 8 rule 3(1)** of the Civil Procedure Rules provides that:-

***“(1) Subject to Order 1, rules 9 and 10, Order 24, rules 3, 4, 5 and 6 and the following provisions of this rule, the court may at***

*any stage of the proceedings, on such terms as to costs or otherwise as may be just and in such manner as it may direct, allow any party to amend his pleadings.”*

**Rule 5 provides that:-**

*“ An amendment may be allowed under subrule (2) notwithstanding that its effect will be to add or substitute a new cause of action if the new cause of action arises out of the same facts or substantially the same facts as a cause of action in respect of which relief has already been claimed in the suit by the party applying for leave to make the amendment.”*

It is clear from the above provisions that any party may be allowed to amend his pleadings at any stage of the proceedings.

9. In the case of **R vs AG [2014] eKLR**, The Court of Appeal stated *“that amendment of pleadings sought before the hearing should be freely allowed, if they can be made without injustice to the other side and there is no injustice if the other party can be compensated by costs”.*

10. Similarly, **Halsbury’s Laws of England 4<sup>th</sup> Edition Volume 36(1) at paragraph 76**, provides that:-

*“... the purpose of the amendment is to facilitate the determination of the real question in controversy between the parties to any proceedings and for this purpose, the court may at any stage order the amendment of any document either on application by any party to the proceedings or of its own motion....The person applying for amendment must be acting in good faith. Amendment will not be allowed at a late stage of the trial if on analysis of it is intended for the first time thereby to advance a new ground of defence. If the amendment for which leave is asked seeks to repair an omission due to negligence or carelessness leave to amend may be granted if the amendment can be made without injustice to the other side.....”*

In the instant suit, the plaintiff seeks among other prayers, an order of eviction against the defendants from the suit property. The defendants have maintained in their defence that they have always occupied the said house. In the supporting affidavit the 1<sup>st</sup> defendant/applicant has explained the need to amend the defence to include a counterclaim.

11. I agree with the plaintiff’s submissions that the application has been brought after unreasonable delay. The matter has come up severally for hearing but has not taken off for one reason or another. However, it is in the interest of justice that I allow this application. The main reason being the matter is coming up for hearing on 28<sup>th</sup> October 2020 and it ought to take off without further delay.

12. In conclusion, I find merit in this application and I grant the orders sought namely:-

- a) That the defendants/applicants are hereby granted leave to amend the defence and counterclaim as set out in the draft amended statement of defence and counterclaim annexed.*
- b) That the amended statement of defence and counterclaim be filed within (7) days and served on the plaintiff.*
- c) That the plaintiff/respondent shall have seven (7) days to file reply to amended defence and defence to the counter claim.*
- d) That costs of this application shall be borne by the defendants/applicants.*

It is so ordered.

**Dated, signed and delivered in Nairobi on this 23<sup>rd</sup> day of September 2020.**

.....

**L. KOMINGOI**

**JUDGE**

**In the presence of:-**

Mr. Mituga for the plaintiff

Mr. Nzioka for the the Defendants

Kajuju - Court Assist ant