



REPUBLIC OF KENYA.

IN THE HIGH COURT OF KENYA AT BUSIA.

ELC. NO. 76 OF 2014 (FORMERLY HCC. 60 OF 2010)

1. CHRISTOPHER JAKOYA ASIKA]

2. BENJAMIN ODERA ASIKA]PLAINTIFFS.

=VERSUS=

CHARLES OPONDO OYENGA]

MAGADALINA APONDI]DEFENDANTS.

R U L I N G.

CHARLES OPONDO AYENGA and MAGADALINA OPONDO, hereinafter referred to as the 1st and 2nd Applicants through M/S. Omondi & co. Advocates, filed the notice of motion dated 27th August, 2014 against **CHRISTOPHER JAKOYA ASIKA** and **BENJAMIN ODERA ASIKA**, hereinafter referred to as 1st and 2nd Respondents, for leave to amend their written statement of defence and include a counter claim.

The application is based on four grounds marked (i) to (iv) and the affidavit of the 1st Applicant sworn on 27th August, 2014.

The Respondents opposed the application through the replying affidavit of the 1st Respondent sworn on 13th October, 2014 and filed through M/S. Wanyama & co. Advocates.

The court heard the submissions of Mr. Omondi and Wanyama advocates for the Applicants and Respondents when the application came up for hearing on 14th October, 2014. The court has carefully considered the grounds on the application, submissions of both counsel, the supporting and replying affidavits and come to the following findings:

1. That under Order 8 Rule 3 of the Civil Procedure Rules, as read with section 3 and 3A of the Civil Procedure Act, this court has jurisdiction to allow any party at any stage of proceedings upon such terms as to costs or otherwise as may be just, to amend the pleadings. The leave sought by the Applicants is to amend the statement of defence which was filed by the Applicants in person. The amended statement of defence will also have a counter claim in the nature of a claim to a portion of the suit land, Marachi/Esikoma/1309, from which the Respondents seeks to have them evicted.
2. That from the materials availed to the court, the application for leave to amend the statement of defence and include a counter claim is not made in bad faith. It will also not prejudice any of the parties but will allow all the issues between the parties over the

suit property to be dealt with in one forum.

3. That for reasons set out above the application dated 27th August, 2014 is allowed in terms of prayer (a) with costs to the Respondent in any event.

It is so ordered.

S.M. KIBUNJA,

JUDGE.

DATED AND DELIVERED ON 13TH DAY OF NOVEMBER, 2014

IN THE PRESENCE OF.....1st PLAINTIFF/APPLICANT

N/A..... 2ND PLAINTIFF/APPLICANT

N/A.....1ST DEFENDANT/RESPONDENT

N/A2ND DEFENDANT/RESPONDENT

MR. OMONDI COUNSEL FOR PLAINTIFF/ RESPONDENT.

JUDGE.