



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA**

**AT NAKURU**

**ELC NO. 148 OF 2016**

**MARY WAMBUI GICHURU.....PLAINTIFF**

**VERSUS**

**JOHN B. KARUGA KINYANJUI.....1<sup>ST</sup> DEFENDANT**

**JAMES SAMUEL KINYANJUI (Sued as the Legal Administrator of the Estate of**

**MUSA MUIKAMBA NGETHE (Deceased).....2<sup>ND</sup> DEFENDANT**

**RULING**

***(Application to amend reply to defence and defence to counterclaim; application allowed).***

1. The application before me is that dated 15 March 2019 filed by the plaintiff. The application is said to be brought pursuant to the provisions of Order 8 Rule 3 of the Civil Procedure Rules, 2010, and seeks orders for leave to amend the reply to defence and defence to counterclaim.
2. The put matters into perspective, the applicant commenced this suit by filing a plaint on 29 April 2016 against one John B. Karuga Kinyanjui. This plaint was amended to add James Samuel Kinyanjui (administrator of the estate of Musa Muikamba Ngethe) as 2<sup>nd</sup> defendant. The dispute is over the land parcel Naivasha/Maraigushu Block 11/148 which is registered in the name of Musa Muikamba Ngethe (deceased). The applicant in her plaint pleaded that it is her husband who was a member of Karai farm and who balloted for the suit land. She pleaded that Musa Muikamba Ngethe (deceased) never balloted for this land and that he became registered as proprietor through fraud and mistake. In the suit, she asked for orders to cancel the title in the name of the deceased.
3. The defendants filed a defence and counterclaim. They contended that the suit land properly belonged to Musa Muikamba Ngethe (deceased) and title was issued to him on 12 November 1999. They further pleaded that the applicant's suit is time barred. In the counterclaim, they pleaded that on 5 February 2012, the applicant wrongfully entered the suit land and is still trespassing on it. They thus sought orders of eviction, vacant possession, and a permanent injunction against the applicant.
4. The case was listed for hearing on 18 March 2019 on which day Mr. Gai, learned counsel for the applicant, withdrew the plaint. He however mentioned that his client would wish to amend the reply to defence and defence to counterclaim, and pointed out that he had already filed an application to that effect. I gave counsel for the respondent time to respond to the application and directed that it be heard inter partes on 12 June 2019. On this day, Mr. Karanja Mbugua, who held brief for Mr. Gaita, learned counsel for the respondents, submitted that Mr. Gaita does not oppose the application.
5. I have considered the application. As I earlier mentioned, it seeks leave to amend the reply to defence and defence to counterclaim. Courts are generally liberal when it comes to amendments and the general position is that amendments need to be freely allowed if the other party is not prejudiced in a manner that may not be compensated by an award of costs (see the case of *Eastern Bakery vs Castellino (1958) EA 461*).
6. This suit is yet to commence and I therefore do not see any prejudice to be caused to the defendants for which they cannot be compensated with by an award of costs.
7. I therefore allow the application, and grant leave to the applicant to amend the reply to defence and defence to counterclaim. The amendments to be effected within 14 days of today.
8. The defendants will however have the costs of this application.

9. Orders accordingly.

**Dated, signed and delivered in open court at Nakuru this 18<sup>th</sup> day of July 2019.**

**JUSTICE MUNYAO SILA**

**ENVIRONMENT & LAND COURT AT NAKURU**

**In presence of :-**

Ms. Amina holding brief for Mr. Gai for the applicant.

Ms. Karuga holding brief for Mr. Gaita for the respondents

Court Assistants: Nelima Janepher/Patrick Kemboi.

**JUSTICE MUNYAO SILA**

**ENVIRONMENT & LAND COURT AT NAKURU**