



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT & LAND COURT**

**AT MOMBASA**

**ELC CASE NO. 5 OF 2016**

**SAFARICOM LTD.....PLAINTIFF/RESPONDENT**

**VERSUS**

**EMFIL LIMITED.....DEFENDANT/APPLICANT**

**RULING**

(Application for amendment of counterclaim; application allowed)

1. Through an application dated 20 May 2019, the defendant has sought two principal prayers. The first is an order for review of a ruling delivered on 16 May 2019 and the second is a prayer seeking leave to amend the defendant's counterclaim.

2. The background is that the plaintiff, a telecommunications company, filed suit inter alia seeking to have the defendant restrained from the land parcel Kwale/Ramisi/Kinondo SS/150. The plaintiff averred that it had entered into a lease with the person it believed was the owner of the land, Jua Maisha Limited, and had proceeded to erect some telecommunication masts. The plaintiff filed suit claiming that the defendant was interfering with her quiet possession of the land and wanted the defendant stopped from doing so.

3. The defendant filed a defence and counterclaim, vide which the defendant asserted that it is she (defendant) who is the registered proprietor of the land and not Jua Maisha Limited. She claimed that the plaintiff had trespassed into her property and sought damages for trespass, and further orders that the plaintiff does dismantle the telecommunication masts erected on the suit property. The plaintiff's suit was dismissed by Omollo J in a ruling delivered on 16 May 2019 after the defendant had filed an application seeking orders to have the plaintiff's suit dismissed for want of prosecution. In this application, the defendant wishes to have that ruling reviewed in respect of the order of costs and also to amend the counterclaim.

4. I will not dwell too much on this aspect of review, for the plaintiff has indicated intention to oppose it, and I directed that the prayer for review be heard separately from the prayer for amendment, which prayer was not opposed by the plaintiff. This ruling is therefore restricted to the prayer seeking leave to amend the counterclaim.

5. As I mentioned, this prayer is not resisted by the plaintiff and on my part I see no reason why I should not allow it. I therefore grant the defendant leave to amend its counterclaim. I direct that the amended counterclaim be filed and served within 7 days. I make no orders as to costs in respect of the prayer for amendment of the counterclaim.

6. Orders accordingly.

**DATED, SIGNED and DELIVERED at MOMBASA this 24<sup>th</sup> day of September 2019.**

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**MUNYAO S.**

**JUDGE.**

**IN THE PRESENCE OF:**

No appearance on the part of M/s Andrew & Steve Advocates for the Defendant/Applicant.

No appearance on the part of M/s Cootow & Associates for the Plaintiff/Respondent.

Court Assistant; Mr. Koitamet.

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**MUNYAO S.**

**JUDGE.**