



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

ELC NO.50 OF 2014

PELELA OLE KISENGERONI (*Suing as the Representatives of*

MORENDAT LARAMATAK SELF HELP GROUP).....**PLAINTIFF**

VERSUS

GILGIL HILLS ACADEMY.....**1ST DEFENDANT**

CHIEF OF KAMPI SOMALI, GILGIL TOWN.....**2ND DEFENDANT**

THE HON. ATTORNEY GENERAL.....**3RD DEFENDANT**

RULING

(Application for amendment of defence; application allowed).

1. The application before me is that dated 13 November 2017 filed by the 1st defendant. It is an application brought pursuant to the provisions of Order 8 Rules 3 and 8, and Order 51, Rule 1 of the Civil Procedure Rules. In the application, the 1st defendant/applicant is seeking orders for leave to amend its defence.

2. By way of background, this suit was commenced through a plaint filed on 20 February 2014, by Pelela Ole Kisengeroni suing as a representative of Morendat Laramatak Self Help Group. The plaintiffs contend to own a parcel of land which they have described as a "cattle holding ground" and they claim that the 1st defendant, on 12 February 2014 encroached into the said land, with the assistance of the 2nd defendant. The plaintiff has averred that on investigation, he has discovered that the land has been allotted to a school known as Gilgil Hills Girls Academy which school is not in existence. He has also alleged that there is another allocation to the 1st defendant over plots described as A and B, which consume the plaintiffs' property. In the suit, the plaintiff wants a declaration that the Group he represents owns the suit property and wishes to have the defendants restrained from the same.

3. The 1st defendant filed defence on 24 July 2014, vide which it averred inter alia that the plaintiff's members have interfered with its land parcel Gilgil Township Block 3/672 within Kampi Somali, in Gilgil Town and have started subdividing and attempting to sell the portions to the public.

4. In the application before me, I have seen that the 1st defendant wishes to amend its defence so as to include a counterclaim. In the proposed counterclaim, the 1st defendant seeks orders for a declaration that it is the lawful owner of the land parcel Gilgil Township Block 3/672, an order of eviction against members of Morendat Self Help Group or any unauthorized persons, and an order of permanent injunction against the plaintiff.

5. The application is not opposed and on my part I see no reason why I should deny the defendant the opportunity to plead its case fully. I can see for myself that the proposed amendments do not bring in a cause of action which is different from what exists in the pleadings herein and it is my view that the counterclaim can well be articulated alongside the claim of the plaintiff.

6. I therefore allow the application and give leave to the 1st defendant to amend its defence in line with the proposed draft defence which is annexed to the supporting affidavit. I direct that the amended defence and counterclaim be filed and served within 14 days from today and upon service, the plaintiffs have 14 days to file any reply to the amended defence and defence to counterclaim.

7. I make no orders as to costs.

8. It is so ordered.

Dated, signed and delivered in open court at Nakuru this 24TH day of January 2018.

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT

AT NAKURU

In presence of : -

Mr. Ochang' holding brief for Mr. Ndubi for the 1st defendant/applicant.

Mr Biko for the plaintiff.

No appearance for the 2nd and 3rd defendants.

Court Assistant: Nelima Janepher

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU