



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA**

**ELC CASE NO. 202 OF 2014**

**DORIS WANGITHI MAINA.....1<sup>ST</sup> PLAINTIFF**

**KENNEDY MUKURI MAINA.....2<sup>ND</sup> PLAINTIFF**

**MARITHA WANGARI .....3<sup>RD</sup> PLAINTIFF**

**VERSUS**

**PERIS WANJIRU MAINA.....1<sup>ST</sup> DEFENDANT**

**MARK MURIUKI MAINA.....2<sup>ND</sup> DEFENDANT**

**RULING**

On 4th October 2016 when the 2nd defendant’s Notice of Motion dated 25th January 2016 came up for hearing, counsel for the parties consented to the status quo obtaining on the land parcel No. KIINE/THIGIRICHI/2134 being maintained pending the hearing of this suit with no party carrying out any development on the said land. That consent therefore settled prayer No. 3 of the said application which sought injunctive relief.

There was however prayer No. 4 which sought the following orders:

***“That the Honourable Court be pleased to allow the 2nd defendant/applicant to amend his defence and that the draft defence and counter-claim be deemed as duly filed upon payment of the requisite fees”***

That prayer was not addressed and when the parties appeared before me on 29th March 2017, I directed that I would make a ruling on that prayer based on the affidavits filed by the parties.

I have considered the application and particularly the prayer by the 2nd defendant seeking leave to amend the defence as per the draft amended defence and counter-claim.

**Order 8 Rule 3 of the Civil Procedure Rules** donates to the Court power to allow any party to amend his pleadings on such terms as to costs as may be just. Though filed in 2014, the trial in this suit is yet to commence. The 2nd defendant wishes to introduce a counter-claim seeking various orders against the 1st defendant. The overriding consideration in an application of this nature is whether the amendments are necessary for the just determination of the dispute between the parties. The policy of the law is that amendments to pleadings are to be freely allowed unless they prejudice the other party in such a way that costs cannot be adequate compensation – see **CENTRAL KENYA LTD VS TRUST BANK LTD & 5 OTHERS 2000 e K.L.R.** In **EASTERN BAKERY VS CASTELINO 1959 E.A 461**, the Court held as

follows:

***“..... Amendments to pleadings sought before the hearing should be freely allowed if they can be made without injustice to the other side, and that there is no injustice if the other side can be compensated by costs”.***

Indeed delay alone will not deny the applicant the remedy to amend pleadings. There is no doubt that the proposed amendments will be necessary for the just determination of the dispute herein and costs can adequately compensate the plaintiff.

The up-shot of the above is that I allow prayer No. 4 of the 2nd defendant's Notice of Motion dated 25th January 2016 in the following terms:

- 1. The 2nd defendant is granted leave to amend his defence and introduce a counter-claim in terms of the draft annexed to his Notice of Motion.***
- 2. The said defence and counter-claim to be served upon the plaintiffs and the 1st defendant within 15 days of this ruling.***
- 3. The plaintiff and 1st defendant are granted leave to file their reply to the defence and defence to the counter-claim within 30 days of service upon them of the amended defence and counter-claim.***
- 4. The 2nd defendant shall meet the costs of this application.***

**B.N. OLAO**

**JUDGE**

**21<sup>ST</sup> APRIL, 2017**

Ruling delivered, dated and signed in open Court this 21<sup>st</sup> day of April 2017

Ms Kiragu for 2<sup>nd</sup> Defendant present

Mr. Kirubi for Plaintiffs – absent.

**B.N. OLAO**

**JUDGE**

**21<sup>ST</sup> APRIL, 2017**