



**REPUBLIC OF KENYA**

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

**ELC CAUSE NO. 270 OF 2017**

**FORMERLY NAKURU HCC NO. 62 OF 2012**

**TITAME OLE SANKEI.....PLAINTIFF**

**-VERSUS-**

**JOHNSON KIPTUMAI CHERUIYOT .....DEFENDANT**

**RULING**

The Defendant herein has by way of Notice of Motion dated 21<sup>st</sup> October, 2016 sought to be granted leave to amend his defence. The Application was supported by several grounds on the face of the Application to which inter alia were that the suit relates to a parcel of land known as MARA/OLOLULUNGA/197 which belongs to the Defendant. The Defendant needs to include a counter claim which was not included in his Defence and that the plaintiff will not suffer any prejudice if the Application is granted.

The Application was further supported by the Supporting Affidavit of the Defendant which he expounds on the grounds Supporting the Affidavit stating that he purchased the suit land in 1997 as the chairman of Botoret Farmers group. That the plaintiff herein despite the sale of the land has refused and failed to have the transfer into the Defendants name claiming that the Original title was lost.

The applicant further stated that the Respondent have interfered with the Land by fencing the same to third parties for cultivation.

The Applicant claims that his previous advocates have despite his interest on the land failed to include a counter claim to the defence that was filed and concludes by saying that he will suffer irreparable damage in the event his counter claim is not addressed.

The Respondent opposed the said application and has filed a replying affidavit dated 18/5/17. The Respondent contends that pleadings have been closed and hence time has expired. Further the Respondent avers that no sufficient reasons have been advanced to warrant the leave and that the amended defence is meant to delay the case.

On the date of the hearing of the Application counsel on record for the parties consented that I look at their respective pleadings and make a determination.

I have read that Application together with Supporting Affidavit and the Replying Affidavit in opposition.

Having considered the pleadings before me I see no prejudice that the Respondent will suffer in respect of the amendment sought. The amendment sought in my opinion does not seem to introduce a new cause of

action and does not intend to substitute the cause of action. This position is fortified under order 8 (3) of the Civil Procedure Rules.

In view of the above I will allow the application dated 21/10/16 with no orders as to costs and order that the amended defence which was filed be deemed to be duly filed and the same be served on the plaintiff. I will also grant leave to the plaintiff to file any reply to the said amended defence.

It is so ordered.

**DATED, SIGNED and DELIVERED** in open court at **NAROK** on this 21<sup>st</sup> day of July 2017.

**Mohamed N.Kullo**

**Judge**

**21/7/17**

In the presence of:

Ms Kilele holding brief for Simiyu for the Defendant/Applicant

Ms. Njoroge for the Plaintiff/Respondent

CA:Chuma