

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT ELDORET

E & L CASE NO. 333 OF 2013

KIPKURGAT KIBOR KIBIEGO.....PLAINTIFF

VERSUS

NICHOLAS GICHURU.....DEFENDANT

RULING

The defendant prays that leave be granted to enable him amend the defence and counterclaim and to enjoin Meshack Rono as the 2nd defendant in the intended amended counterclaim. The application is based on grounds that it is in the best interest of justice that the court grants this application as presented to allow the applicant to enjoin the intended 2nd defendant as indicated on the drafted amended defence and counterclaim. The defendant wishes to enjoin one Meshack Rono as the 2nd defendant in the intended amended defence and counterclaim. That it is therefore only mete and just that the application herein be allowed as prayed. That it is therefore only merit and just that the application herein be allowed as prayed.

The application is supported by the affidavit of Nicholas Gichuru who states that he desires to amend his defence and counterclaim to enjoin the proposed intended 2nd defendant to be a party herein to allow for fair, just, expedient and all-inclusive hearing, consideration and final determination of this suit. That he filed a defence and counterclaim on 15th July, 2012 through his then advocate against the plaintiff/respondent herein. That the instant application is made in good faith, in interest of justice and fairness and therefore justly imperative that it is allowed as prayed. That the respondent won't suffer any irreparable prejudice if this application is allowed. That the plaintiff, Kipkurgat Kibiego Kibor sued him for orders of eviction.

That he defended the suit and subsequently filed a counterclaim claiming the suit as a purchaser for consideration value. That however, he purchased the subject land from Meshack Ronoh with the full knowledge of the respondent herein. That following the unfolding's herein and realizations, he now wishes to amend his defence and counterclaim and enjoin the said Meshack Ronoh as 2nd defendant in the counterclaim to enable the Hon. Court Arrived at just conclusion and determination. That he further claims ownership of the suit land as a matter of adverse possession since he has been in possession for over 12 years running uninterrupted.

The application is opposed by an affidavit which from the offset is defective as it is not clear who the deponent is. It is not clear as it appears sworn by Kipkurgat Kibor Kibiego whilst the 1st page shows that it is sworn by Nicholas Gichuru. For those reasons, I will not consider it.

I have considered the application and do find that the plaintiff has not demonstrated that he will be prejudiced if the orders are granted. I do grant orders that the defence be amended as prayed. The defence to be amended and served within 7 days. The plaintiff to file a reply to amended defence and defence to counterclaim within 7 days of service.

DATED AND DELIVERED AT ELDORET THIS 17TH DAY OF AUGUST, 2017.

A. OMBWAYO

JUDGE