



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA**

**AT NAKURU**

**HCC NO.260 OF 1999**

**JOHN EDWARD NJERU.....1<sup>ST</sup> PLAINTIFF**

**MOHAMED HASSAN ALI SAJAN.....2<sup>ND</sup> PLAINITFF**

**VERSUS**

**COMMISSIONER OF LANDS.....1<sup>ST</sup> DEFENDANT**

**GEORGE KARANJA NJENGA.....2<sup>ND</sup> DEFENDANT**

**KENNETH MAINA MAKERI .....3<sup>RD</sup> DEFENDANT**

**ELIZABETH KAMAU .....4<sup>TH</sup> DEFENDANT**

**ISAAC MWANGI MUYA.....5<sup>TH</sup> DEFENDANT**

**CHARLES NJOROGE .....6<sup>TH</sup> DEFENDANT**

**SCHOOL COMMITTEE NAKURU TEACHERS PRIMARY SCHOOL.....7<sup>TH</sup> DEFENDANT**

**MUNCIPAL COUNCIL OF NAKURU (EDUCATION DEPARTMENT).....8<sup>TH</sup> DEFENDANT**

**NAKURU TEACHERS HOUSING CO-OPERATIVE SOCIETY LTD.....9<sup>TH</sup> DEFENDANT**

**RULING**

***(Application for amendment of defence to include a counterclaim; hearing of the suit yet to commence; no prejudice to be suffered by plaintiffs; application allowed)***

1. The application before me is that dated 9 May 2017 filed by the 2nd, 3rd, 4th, 5th, 6th and 7th defendants. It is an application brought pursuant to the provisions of Order 8 Rule 3 of the Civil Procedure Rules and the principal order sought is for leave to amend the defence of the applicants so as to include a counterclaim. The application is opposed by the plaintiff and before I go to the gist of the same, I think it is important that I put this application in the context of the case.

2. This is an old suit commenced in the year 1999. The two plaintiffs have pleaded that they are the registered owners of the land parcel Nakuru Municipality Block 25/1115 (hereinafter the suit land). On

this land is a school which is under the management of the 7th defendant. They pleaded that the defendants have taken over this land illegally and in the suit, they have inter alia asked for orders of eviction. The position of the defendants is that this land is public land set apart for the establishment of a school and that the plaintiffs cannot claim the suit land.

3. In the present application, the 2nd to 7th defendants wish to add a counterclaim basically to seek prayers for the cancellation of the title held by the plaintiffs.

4. The plaintiffs have opposed the motion through the replying affidavit of the 1st plaintiff. He has principally justified his acquisition of the suit land and asserted that he is the legal owner of it.

5. I have considered the application. What is before me is an application to amend the defence so as to add a counterclaim. Generally, the court is fairly liberal when it comes to applications to amend. As was stated in the case of *Eastern Bakery vs Castellino (1958) EA 461*, amendments to pleadings sought before the hearing should be freely allowed if they can be made without injustice to the other side, and there is no injustice if the other side can be compensated by costs.

6. This case is yet to commence and I see no prejudice that will be suffered by the plaintiffs if I am to allow this application. I have noted the plaintiffs' assertions in their replying affidavit that they are the owners of the suit land. But that assertion within the context of this application is misplaced, because their title is disputed. The issue of who is entitled to ownership of the land cannot be made within this application but can only be done after hearing the parties on merits.

7. I see no reason why I should not allow this application and the same is hereby allowed. I direct the applicants to proceed and formally amend their defence within 14 days from today. Upon amendment, the application to be served in the usual manner and the plaintiffs are at liberty to file their reply to the amended defence and defence to counterclaim.

8. On costs, the same shall be to the plaintiffs.

9. It is so ordered.

**Dated, signed and delivered in open court at Nakuru this 20<sup>th</sup> day of September 2017.**

**MUNYAO SILA**

**JUDGE**

**ENVIRONMENT & LAND COURT**

**AT NAKURU**

**In presence of :-**