



**REPUBLIC OF KENYA**

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

**ELC CASE NO. 64 OF 2017**

**(formerly Machakos HCCC No. 282 of 2010)**

**SHADRACK ONGARO OSORO.....PLAINTIFF**

**VERSUS**

**MWAURA KARUGA.....DEFENDANT**

**RULING**

The application before Court is the Defendant's Notice of Motion dated 26th February, 2015 brought pursuant to Order 6 A Rules 3, 5 and 8 of the Civil Procedure Rules and all the other enabling provisions of the Law. The Application is based on the grounds which in summary are that the statement of Defence as filed does not bring out the real issues for determination. The Defendant will wish to bring out the issue that it was the Plaintiff who had been charged criminally with malicious damage to Defendant's property and to include a counterclaim for the property damaged by the Plaintiff. The amendments shall not prejudice the Plaintiff but will enable the court to determine the real question or issues herein.

The application is supported by the affidavit of MWAURA KARUGA who is the Defendant herein where he deposes that the Statement of Defence filed herein is bare, does not bring out the issues in controversy for determination and there is no counterclaim to enable him be compensated for the damage and or loss. He seeks leave of Court to amend his statement of Defence.

On 31st July, 2017 Mr Kerongo Counsel for the Defendant argued the said application but the firm of Moturi Mbeche & Company Advocates were absent though duly served.

The Defendant seeks leave to amend his Defence and include a counterclaim. I note the Plaintiff did not file any replying affidavit to oppose the Defendant's application. It is the Defendant's contention that it is pertinent to amend the Defence to enable the Court make a proper determination of the suit herein.

Order 8 rule 5 (1) of the Civil Procedure Rules provides that '**for the purpose of determining the real question in controversy between the parties, or of correcting any defect or error in any proceedings, the court may either of its own motion or on the application of any party order any document to be amended in such manner as it directs and on such terms as to costs or otherwise as are just.**'

Since the Plaintiff did not oppose the application and in relying on the provisions of Order 8 rule 5 (1) of the Civil Procedure Rules, I will allow the Defendant's Notice of Motion dated 26th February, 2015.

The Defendant is ordered to file an amended Statement of Defence within 14 days from the date hereof.

The costs will be in the cause.

**Dated signed and delivered in open court at Kajiado this 24th day of October, 2017.**

**CHRISTINE OCHIENG**

**JUDGE**