



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

ELC NO.263 OF 2013

RAPHAEL WANDAKAPLAINTIFF

VERSUS

ELIZABETH WAMBUI MWANGIDEFENDANT

RULING

(Application to amend defence; application not opposed; application allowed).

1. The application before me is that dated 1 October 2015. It is an application brought under Order 8 Rule 3 of the Civil Procedure Rules, and Sections 63, 1A, 1B and 3A of the Civil Procedure Act. It is an application seeking leave to amend the Defence to include a Counterclaim.

2. The suit itself was commenced on 25 March 2013 by way of plaint. In the plaint, the plaintiffs pleaded that one Muturi Munene, the father and husband of the 1st and 2nd plaintiffs respectively, owned a Ballot No. 36 in Mukinye Farmers Co-operative Society Limited. It is claimed that some two persons, namely Erastus Kimanga and Geoffrey Gachathi fraudulently transferred this ballot and it eventually ended up in the name of the defendant. This ballot later became the land parcel Gilgil/Karunga Block 5/36 which is registered in the name of the defendant. In this suit, the plaintiffs want a cancellation of the defendant's title to the said land.

3. In her defence, the defendant pleaded inter alia that she purchased the suit property for consideration from one Geoffrey Gacathi Ngengi in the year 2011. She denied having fraudulently transferred ownership of the suit property to herself and asked that the plaintiffs' suit be dismissed with costs.

4. I have seen the draft proposed amended defence and counterclaim annexed by the defendant to her supporting affidavit. It elaborates her defence on how she acquired the suit property, and in the counterclaim, she inter alia seeks a declaration that she is the lawful proprietor of the suit property alongside an order of permanent injunction against the plaintiffs.

Nothing was filed by the plaintiffs to oppose this application.

5. I have considered the application which is for amendment. Courts are generally liberal when it comes to allowing applications to amend. I do not see what prejudice the plaintiffs stand to suffer if the application is allowed as the hearing of the matter has not even commenced.

6. I therefore allow the application. I direct the defendant to file and serve the amended defence and counterclaim within 14 days. I make no orders as to costs.

7. It is so ordered.

Dated, signed and delivered in open court at Nakuru this 22nd day of March, 2016.

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT

AT NAKURU

In presence of: -

Mr Kahigah Waitindi for defendant/applicant

No appearance on part of M/s Wambugu Kariuki & Co. for plaintiff/respondent

Court Assistant: Janet

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT

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