



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

ELC CIVIL CASE NO. 148 OF 2012

NAHLA FADHIL (Suing thr' DANIEL

MUTUA *her lawful Attorney*).....PLAINTIFF

=VERSUS=

MUMBO DERI MOYO.....DEFENDANT

R U L I N G

1. The Defendant is seeking to amend the Defence vide his Application dated 25th April, 2016.
2. The Application is premised on the ground that the Defence was filed in a hurry and that the Defendant has now discovered that there is a counterclaim that he wants to raise.
3. According to the Defendant, the only way that the dispute can be concluded and all issues canvassed with finality is by allowing the amendment of the Defence and Counterclaim.
4. In response, the Plaintiff's Attorney deponed that the Defendant from the outset appointed a competent advocate; that the Defendant has had ample opportunity to amend the Defence and that no good reasons have been given for the inordinate delay considering that the Plaintiff has already closed his case.
5. It is the Plaintiff's case that the issues raised in the proposed counterclaim are contradictory and that the proposed amendments will convolute the matters in controversy.
6. In his oral submissions, the Defendant's advocate submitted that the court has wide discretion to amend pleadings; that no prejudice will be suffered by the Plaintiff if the amendments are allowed and that the application is meant to forestall the filing of a multiplicity of suits.
7. The Plaintiff's advocate submitted that the Defendant has had ample time to file the amended Defence and Counterclaim and that if the application is allowed, it means that the trial has to commence de novo thus delaying the matter further.
8. This suit was commenced by way of a Plaint on 11th September 2012. In the Plaint, the Plaintiff is seeking for an order of eviction and for damages for trespass and or mesne profits since the year 2008.
9. The Defendant, through his advocate, filed his Defence on 20th November; 2012. In his Defence, the Defendant pleaded that he has been in actual possession of the suit property for over 30 years.

10. It is obvious from the Defence that the Defendant was aware that he could raise a counterclaim on the basis that he has been on the land for more than 30 years.

11. Indeed, having raised the issue of adverse possession in his Defence, the Plaintiff should pursue that issue as a Defence considering that the delay in filing the current Application is inordinate and unreasonable.

12. The Plaintiff has testified in this matter and closed his case. It will be prejudicial to re-open the matter and re-litigate all over again.

13. If the Defendant succeeds with his Defence that he has been on the suit property for more than 30 days, then he will still be entitled to the suit property considering that the Plaintiff's suit will be time barred.

14. It is for those reasons that I dismiss the Defendant's Application dated 25th April, 2016 with costs.

Dated, signed and delivered in Malindi this **22nd** day of **September**, 2016.

O. A. Angote

Judge