



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

ELC NO 247 OF 2014

CALEB ISABOKE NYAMWANGEPLAINTIFF

VERSUS

JAMES OGINDA.....DEFENDANT

RULING

(Application to amend defence and counterclaim; no reason to deny the application; application allowed)

1. The plaintiff's case in this suit is that he is the registered proprietor of the land parcel Nakuru/Molo/Kapsita/467 measuring 2.02 hectares. He purchased the said land on 28th March 2013 and acquired title on 24th April 2013. The seller was Abraham Birundu Nyangoto and they had an agreement dated 28th March 2013, for the sale of the land for Kshs. 2,000,000/=. He has averred that despite being the owner the defendant has moved into the land. In his plaint, he has asked for orders that he be declared the owner of the suit property and for an eviction order.

2. The defendant filed defence and counterclaim. He believes that he is the lawful owner of the suit property, having purchased it from one Lilian Mbuu on 4th December 2009. He took occupation and started dwelling in it. While he was in occupation, a person by name of Abraham Birundu Nyangoto came to the land and also claimed to have purchased it from the original owner. He entered into an agreement with Mr. Birundu on a settlement. In the agreement, dated 30th April 2013, Mr. Birundu sold the land to the defendant for a sum of Kshs. 1,000,000/=. He has averred that the plaintiff knew very well that the defendant had purchased the land and has no right to it.

3. The defendant has now applied to amend his defence and counterclaim. He wants to enjoin Abraham Birundu as a defendant to his counterclaim alongside the District Land Registrar Nakuru. I have seen the draft amended defence and counterclaim. He wishes to add that the Land registry fraudulently issued two title deeds for the same land and that Mr. Birundu misrepresented himself to be the true owner. He also intends to add the pleading that if he cannot get the land, then he deserves the refund of the sum of Kshs. 680,000/= from Mr. Birundu, which money he avers he paid Mr. Birundu.

4. Courts are usually liberal when it comes to allowing a party leave to amend. Unless there are exceptional circumstances, there would be no reason to deny a party to present his case in the manner that

he wishes. I do not see any prejudice that may be suffered by the plaintiff if I allow this application. I therefore allow it. I direct the defendant to formally file the amended defence and counterclaim within 14 days from the date hereof and proceed to serve it in the usual manner. The defendant will however shoulder the costs of the application as he had room to plead his case properly in the first instance.

It is so ordered.

Dated, signed and delivered in open court at Nakuru this 18th day of June 2015.

MUNYAO SILA

JUDGE

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In presence of :-

Mr Wambeyi holding brief for Mr Gekonga for defendant/applicant.

N/A for M/s Nyambegera for plaintiff/respondent

Janet : CA

MUNYAO SILA

JUDGE

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