



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

HCCC NO. 57 OF 2014

GEOFFREY KIIRU KINYANJUI1ST PLAINTIFF

DAUD MOHAMMED.....2ND PLAINTIFF

VERSUS

SAYID MOHAMMED AMINDEFENDANT

RULING

(Application to amend defence and counterclaim; application allowed).

1. The application before me is that dated 27 February 2015 filed by the defendant. It is an application seeking leave to amend the Defence and Counterclaim.

2. The suit itself was commenced by way of plaint filed on 31 July 2014. The case of the plaintiffs is that through an agreement dated 26 March 2007, the defendant appointed them as his agents, to sub-divide the land parcel Naivasha/Maraigushu Block 10/2 (Kedong) measuring 71.36 hectares into several plots and sell them. It is averred in the plaint that the defendant agreed that the plaintiffs should remit a sum of Kshs. 45,000/= per plot and that the plaintiffs' commission would be the sum over and beyond the Kshs. 45,000/=. The plaintiffs pleaded that they sub-divided the land into 847 plots at their own cost and solicited for buyers. It is pleaded that the defendant reneged on his promise and apportioned 254 plots to himself and amalgamated them into one parcel of 43 acres which he sold directly to a group of people without recourse to the plaintiffs. It is also pleaded that the defendant refused to sign transfers to the purchasers of 593 plots sold by the plaintiffs. In the suit, the plaintiffs want the defendant stopped from dealing in the property Naivasha/Maraigushu Block 10/2 or any of the sub-divisions.

3. The defendant filed defence and counterclaim on 8 October 2014. In the same, he denied having entered into the agreement as alleged by the plaintiffs. He pleaded that the 2nd plaintiff is an AP officer and he approached him with an offer to help the plaintiff ward off squatters; he also offered to facilitate sub-division and sale of the property. It is averred that the defendant agreed and set the price at Kshs. 300,000/= per 1/8th plot. He pleaded that the commission was to be the price over and above this figure. The 2nd plaintiff later introduced the 1st plaintiff as partner. He averred that he has been paid a sum of Kshs. 13, 500,000/= which does not reflect the agreed sale prices nor the amount paid by the purchasers. In his counterclaim, he pleaded that without any legal basis, the plaintiffs fraudulently transferred to themselves 15 sub-divided plots. He asked for orders to have the titles to these properties be cancelled.

4. I have looked at the draft amended defence and counterclaim annexed to the application to amend. The

defendant proposes to add other prayers to his counterclaim. He wishes to add prayers for an audit on the entire transactions undertaken by the plaintiffs; an order for bank statements to a certain account; an order of M-Pesa statements of the plaintiffs in respect to the suit properties; and costs of the counterclaim.

5. Mr. Karanja Mbugua for the plaintiffs stated that he is not opposed to the application.

Courts are generally liberal when it comes to applications to amend. I on my part see no reason why I should deny the defendant an opportunity to present his case as he so wishes. I therefore allow the defendant to amend his defence and counterclaim. I direct that the amended defence and counterclaim be filed and served within 14 days from the date hereof. The plaintiffs are at liberty to file an amended reply to defence and defence to counterclaim 14 days upon service of the amended defence and counterclaim.

6. The costs of the application will be shouldered by the defendant as he had opportunity to plead his case properly in the first instance.

It is so ordered.

Dated, signed and delivered in open court at Nakuru this 9th day of July 2015.

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT

AT NAKURU

In presence of : -

Mr P O Odhiambo for defendant/applicant

N/A for M/s Karanja Mbugua & Co Advocate for plaintiffs/respondents

Janet: CA

MUNYAO SILA

JUDGE

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