



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET**

**E&L NO. 173 OF 2012**

*Formerly HCC 103 OF 2004*

**JOSEPH KIPTANUI CHEMWENO.....PLAINTIFF**

**VS**

**JOSEPH K.M. TIREITO.....DEFENDANT**

***(Application to amend defence; application unopposed; application allowed).***

**RULING**

The application before me is that dated 16 April 2014 filed by the defendant. It is an application seeking leave to amend the Statement of Defence.

This suit was commenced by way of plaint filed on 4 August 2004 through which the plaintiff pleaded that he purchased from the defendant 5 acres out of the land parcel LR No. 779/359. It is contended that the parties attended the land board and the requisite consent was issued but that the defendant has refused to transfer the 5 acres to the plaintiff. The plaintiff's main prayer is one of specific performance.

The defendant filed a Statement of Defence on 7 September 2004. In the Defence he denied selling the suit land to the plaintiff.

Through this application, the defendant wishes to plead that the consent of the land control board was obtained by fraud, misrepresentation and undue influence. He also wishes to further elaborate his defence and has included a counterclaim. The application is not opposed by the plaintiff.

On my part I see no reason why I should decline the application. Courts are generally liberal when it comes to allowing parties to amend their pleadings. Although the amendments have come after a considerable duration of time, I think no prejudice will be caused to the plaintiff if I am to allow the amendments.

I therefore grant leave to the defendant to amend his defence. I direct that the Amended Statement of Defence be filed and served within 14 days. The plaintiff can thereafter respond in the usual manner. The costs of the application will however be shouldered by the defendant.

It is so ordered.

**DATED AND DELIVERED AT ELDORET THIS 2ND DAY OF OCTOBER 2014**

**JUSTICE MUNYAO SILA**

**ENVIRONMENT AND LAND COURT AT ELDORET**

*Delivered in the presence of:*

*Delivered in the presence of:*

*MR. A.T. Kiboi present for plaintiff/respondent.*

*Mrs. L.C. Kamau present for defendant/applicant.*