



**Kirongo v Jerotich (Environment & Land Case E006 of 2023)  
[2024] KEELC 4150 (KLR) (16 May 2024) (Ruling)**

Neutral citation: [2024] KEELC 4150 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAPSABET  
ENVIRONMENT & LAND CASE E006 OF 2023  
MN MWANYALE, J  
MAY 16, 2024**

**BETWEEN**

**JULIUS KIPKURGOI KIRONGO ..... PLAINTIFF**

**AND**

**ZEDDY JEROTICH ..... DEFENDANT**

**RULING**

1. This Ruling is in respect of the Notice of Motion application dated 18<sup>th</sup> March 2024; which seeks to amend the statement of defence on the grounds that the Defendant Applicant seeks to amend the defence so as to include a counterclaim which was necessitated by new issues which have emerged and the proposed amendment would not prejudice the Plaintiff/Respondent.
2. The application is supported by the affidavit of Zeddy Jerotich the Applicant who has annexed a draft defence amended defence and counterclaim.
3. On 20/3/2024, the Court issued directions as to filing of a response within 7 days by the Plaintiff/Respondent as well as filing of written submissions by both parties within a given time frame but not later than 25/4/2024 and the Ruling reserved for today.
4. No replying affidavit nor grounds of opposition were filed by the Respondent in opposition of the application.
5. As at the date of writing of this Ruling, which was way past the 25/4/2024 which parties had been given to file their respective submissions, none of the submissions had been filed.
6. The application is thus unopposed but the Court shall nonetheless subject the same to a merit review to find whether the same is merited.
7. By way of a background the Defendant had filed a statement of Defence in person on 23/01/2024 and upon appointing Counsel, the Counsel filed the present application.



8. I have perused the application and the draft amended statement of defence and counterclaim and the only issue for determination is whether the application is merited.
9. In her supporting affidavit the Applicant depones of the existence of new issues which were not captured in her statement of defence hence the need to seek leave to amend.
10. She depones further the amendment will bring all issues in controversy to light and assist the Court in reaching a conclusion that settles all the issues in the matter.
11. The draft defence and counterclaim indeed proposes to introduce the issue of subdivision of Nandi/Ngechek755 into Nandi/Ngechek822 and Nandi/Ngechek823 without knowledge of her family that there was fraud in execution of documents to Kiptogom Arap Lagat who sold them to Plaintiffs.
12. The above are indeed new issues that are not captured in the original statement of defence as filed and there is merit to have these issues captured and determined in the current suit, as the Plaintiff claim Nandi/Ngechek/823 as at paragraph 3 of his plaint and pleads to have purchased the same from one Kiptogom Arap Lagat who the Defendant seeks to introduce in the counterclaim.
13. The Court is thus convinced that the application has merit in view of the issues raised in the draft amended defence and counterclaim which had been omitted in the original statement of defence and which arise from the plaint itself.
14. Since the Plaintiff/Respondent and the proposed 2<sup>nd</sup> Defendant in the counterclaim will have an opportunity to file their respective defences to counterclaim. I find no prejudice will be occasioned to them.
15. In the end result, I allow the application for amendment of the defence and counterclaim in terms that; -
  - i. The Defendant/Applicant is granted leave to amend and serve his defence and counterclaim within 14 days from today.
  - ii. The Plaintiff/Respondent to file the reply to defence to counterclaim within 15 days from date of service.
  - iii. All the parties to comply with Order 11 within 21 days from the date of service of the last pleading to be filed in the matter.

**RULING, DELIVERED AND DATED AT KAPSABET THIS 16TH DAY OF MAY 2024.**

**HON. M. N. MWANYALE,**

**JUDGE**

In the presence of; -

1. Mr. Tallam for the Defendants/Applicant
2. Mr. Sambu for Plaintiff/Respondent

