



Cheefwest Hotel Limited & another v Bett; Kenya Commercial Bank & another (Interested Parties) (Civil Case 11 of 2021) [2022] KEHC 10548 (KLR) (21 June 2022) (Ruling)

Neutral citation: [2022] KEHC 10548 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
CIVIL CASE 11 OF 2021
RE ABURILI, J
JUNE 21, 2022**

BETWEEN

CHEEFWEST HOTEL LIMITED 1ST PLAINTIFF

CHRISPINUS MUTSAMI MUTESHI 2ND PLAINTIFF

AND

LYNN MILDRED BETT DEFENDANT

AND

KENYA COMMERCIAL BANK INTERESTED PARTY

EQUITY BANK INTERESTED PARTY

RULING

1. This date was taken by consent of both parties' counsel on 4/5/2022 for the hearing of the Main Suit herein after the court had certified the suit as ready for trial. Initially, the suit was slated for hearing on 3/5/2022 which fell on a public holiday as gazette, subsequent to the fixing of the hearing date.
2. On 15/3/2022, this court upon certifying the suit as ready for hearing granted both the Plaintiffs and the defendant leave to file any documents that they intended to file within 21 days of the said date and the defendant had 10 days from date of service to file and serve any document.
3. On the eve of the hearing which was yesterday, an application under Certificate of urgency was filed by the plaintiff's counsel seeking to have the application certified as urgent. This court declined to certify the application as urgent and directed that the same be served upon the defendant for mention for directions today as the Main Suit is due for hearing today.
4. The application seeks leave to amend the Plaint to introduce another prayer / cause of action on account that the Plaintiff has discovered new documents from the Registrar of Companies.



5. I have had a glance at the application and the supporting affidavit and documents annexed thereto. I have also perused the letter dated 10/5/2022 addressed to the Deputy Registrar of this court by the DCI seeking copies of proceedings and all documents filed before this court before and during the proceedings from both parties, on account that the DCI is conducting investigations in this matter.
6. Whereas a party has a right to seek leave for amendment of pleadings to clarify its cause of action, I am concerned, as correctly pointed out of Ms. Wanjiru counsel for the defendant, in her opposing submissions, that the plaintiff had all the time to amend the Plaint and or file further documents in this case but elected to file the application for amendment on the eve of the hearing of this case with the intention of scuttling the hearing.
7. This observation was made by the Presiding Judge, Busia High Court in his ruling where an application to join the Banks was made. This is a 2020 case which has oscillated from Busia High Court to Kisumu High Court to Siaya High Court with no indication that it will be heard, if this trend continues.
8. This court having made such an observation, just as it was made by Hon. J. Karanja, I had nonetheless fixed the suit for hearing and I am still ready to hear this case, save for the application filed at the 11th hour. The adjournment sought shall inconvenience the defendant and her counsel who are both physically present in court. The court too is inconvenienced on trial date certainty and the timelines set for determination of suits.
9. However, this is the first time an adjournment is being sought on account of the plaintiffs seeking leave to amend their Plaint and which leave can be sought and obtained, if it merits, at any time before the hearing and determination of the suit.
10. Costs can adequately compensate the defendant and her advocate both of whom are before this court.
11. For the above reasons and observations, I grant an adjournment, quite reluctantly and direct that a hearing date for the application dated 20/6/2022 be fixed first and that application be disposed of upon while the Main Suit shall be set down for hearing and in the new term, with a warning to the parties that this court shall not entertain any form of procrastination in the disposal of this suit as the court does exist to resolve disputes for the parties and not to archive pleadings.
12. In addition, having considered this hotly contested suit whose hearing is not forthcoming in view of the application after application, and this court having launched Court Annexed Mediation, I hereby direct that this suit (not application for amendment of the Plaint) shall in the first instance be and is hereby referred to the mandatory Court Annexed Mediation as stipulated in law, since it has not yet been heard.
13. A duplicate file shall be opened to handle the application for amendment of pleadings while the Main file shall forthwith be taken to the Mediation Registry for processing.
14. Parties are directed to submit to the mediation process. The Deputy Registrar shall forthwith identify and inform the parties of the accredited mediators who are competent to engage the parties hereto. Mention shall be before the Deputy Registrar for appointment of a mediator for the parties.
15. I further direct that the application dated 20/6/2022 shall be heard by way of written submissions. The defendant has 7 days of today to file and serve a response. The applicant to file and serve a further affidavit if need be within 7 days of service, together with the written submissions, upon which the defendant shall file and serve written submissions within 7 days.
16. Mention on 19/7/2022 before the Deputy Registrar to confirm compliance and to fix a Ruling date before the Judge.



17. On costs, the defendant has travelled from Busia while the defence counsel has travelled from Nairobi ready for the hearing of this suit. I hereby award the defendant Kshs. 2,500/= travelling expenses from and to Busia. The defence counsel is hereby awarded Kshs. 15,000/= travel costs from and to Nairobi city.
18. The plaintiff shall also pay into this court, Court Adjournment fees of Kshs. 5,000/=. All these costs shall be paid to the defence and to this court respectively, within the next 14 days of this date. Mention before the Deputy Registrar for appointment of a Mediator on 29/6/2022. Both parties to attend in person.
19. I so order.

DATED, SIGNED AND DELIVERED AT SIAYA, THIS 21ST DAY OF JUNE 2022

R.E. ABURILI

JUDGE

