



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL CASE NO. 404 OF 2015

ROBERT MUCHANGI KIRAGU.....PLAINTIFF

-VERSUS-

NIC BANK LIMITED.....1ST DEFENDANT

THE ATTORNEY GENERAL...2ND DEFENDANT

RULING

1. This ruling and order on directions relates to the question touching on whether the 1st defendant ought to be granted leave of the court to amend its statement of defence.
2. A brief background of the matter as seen from the record is that the plaintiff lodged a suit against the defendants herein by way of the plaint dated 24th November, 2015 and sought for various reliefs including general damages arising out of a claim for malicious prosecution.
3. The claim is defended, with the defendants putting in their statements of defence separately to challenge the allegations made in the plaint.
4. The matter proceeded for hearing on 5th March, 2020 with the plaintiff giving his oral testimony. However, at the point of cross-examination, *Miss Mburu* advocate for the 1st defendant made an oral application for leave to amend the statement of defence.
5. The application for amendment was opposed by *Miss Mwangi* counsel for the plaintiff who argued that any amendment thereof would prejudice her client, who had already given his evidence-in-chief.
6. The law on amendments is well settled. Under the provisions of Section 100 of the Civil Procedure Act, this court has general power to amend pleadings to correct any defect or error in a suit at any stage of the proceedings on terms as to costs or otherwise as it may deem just and all amendments should be made for the purpose of determining the real question or issues arising between the parties in the proceedings. The above provision is echoed by **Order 8, Rules 3 and 5** of the **Civil Procedure Rules, 2010 (“the Rules”)**.
7. Moreover, Order 8, Rule 3 (1) of the Rules grants the court power to allow an amendment of pleadings at any stage of the proceedings as and when it deems fit whereas Order 8, Rule 3 (5) prescribes thus:

“An amendment may be allowed under subrule (2) notwithstanding that its effect will be to add or substitute a new cause of action if the new cause of action arises out of the same facts or substantially the same facts as a cause of action in respect of which relief has already been claimed in the suit by the party applying for leave to make the amendment.”
8. It is clear from the foregoing that the courts have wide and unfettered discretion to allow the amendment of pleadings at any stage of the proceedings before judgment is entered.
9. In the present instance, upon my perusal of the record and proceedings, it is apparent that the 1st defendant has not elaborated on the particulars of amendments to be made or availed a draft amended statement of defence in that respect. The application for amendment which was brought by counsel for the 1st defendant is vague to say the least.

10. Consequently, and for the foregoing reasons, I am hesitant to issue a blanket order for amendment. However, in the interest of substantive justice I hereby make the following orders and directions:

- a. The 1st defendant shall file and serve a formal application for leave to amend its statement of defence within 7 days hereof.**
- b. The plaintiff shall thereafter file and serve his response within 7 days from the date of service.**
- c. The parties shall thereafter obtain a mention date from the registry to confirm compliance and take further directions on the hearing of the application for amendment.**

DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 29TH DAY OF OCTOBER, 2021

.....

J. K. SERGON

JUDGE

In the presence of:

..... for the Plaintiff

..... for the 1st Defendant

..... for the 2nd Defendant