



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL DIVISION

HIGH COURT CIVIL CASE NO. 357 OF 2011

RODICA DANCIU (Suing as the Personal legal Representative of the estate of

VLAD DANCIU Deceased)**PLAINTIFF**

VERSUS

TELCOM KENYA LTD.....**DEFENDANT**

RULING

1. The application dated 17th January, 2020 principally seeks orders that the honourable court be pleased to grant leave to the Plaintiff to further amend the Amended Plaint as per the draft further Amended Plaint as annexed hereto.
2. Secondly, that if leave is granted, the Defendant herein be granted commensurate leave to amend their Defence (if necessary) within 7 days of service of the further Amended Plaint.
3. It is averred in the affidavit in support of the application that the Plaintiff has subsequent to the filing of the suit herein changed her name to Rodical Harangus Panturu following her remarriage. That the Plaintiff wishes to make a further amendment to the plaint to bring her claim under the Law Reform Act Cap 26 Laws of Kenya.
4. The application is opposed. It is stated in the replying affidavit that the Plaintiff is guilty of laches with the suit having been instituted nine years ago. It is stated that the suit is now in its final stages, with the Plaintiff's case closed and the Defence case only remaining to be heard. That the amendment is aimed at defeating the defence case with the defence strategy having been laid bare during the cross-examination of the Plaintiff and her witnesses wherein some flows were revealed in the Plaintiff's case. It is contended that amending the Plaint at this stage will prejudice the Defendant's case as the Plaintiff will cover all the loopholes exposed by the cross-examination of the Plaintiff's witnesses.
5. I have considered the application, the response to the same and the submissions made by the respective counsel for the parties.
6. Under Order 3 rule 1 Civil Procedure Rules an amendment of a pleading can be made at any stage with the leave of the court on terms that are just.
7. The prerequisites for amending pleadings were stated by the Court of Appeal in the case of **Lucia Kibui Muchiri v Kotton Mwandabe & another [2016] eLKR** as follows:

“...power to so amend can be exercised by the court at any stage of the proceedings (including appeal stages); that as a general rule, however late, the amendment is sought to be made it should be allowed if made in good faith provided costs can compensate the other side; that the proposed amendment must not be immaterial or useless or merely technical; that if the proposed amendment introduces a new case or anew ground of defence it can be allowed unless it would change the action”

8. In **Central Kenya Ltd v Trust Bank Ltd & 5 others [2000] eLKR** the Court of Appeal encapsulated the following position:

“The overriding consideration in applications for such leave is whether the amendments are necessary for the just determination of the controversy between the parties. Likewise mere delay is not a ground for declining to grant leave. It

must be such delay as is likely to prejudice the opposite party beyond monetary compensation in costs. The policy of the law is that amendments to pleadings are to be freely allowed unless by allowing them the opposite side would be prejudiced or suffer injustice which cannot properly be compensated for in costs.”

9. In the instant case, the Plaintiff has explained that she has since changed her name and further wishes to seek relief under the Law Reform Act. The mistake made in not seeking relief under the Law Reform Act cannot be equated to bad faith. The lateness in bringing the application after amendment will not visit injustice on the Defendant. The matters in controversy remain the same. The Defendant will also have the opportunity to amend it's Defence if it so wishes and further cross-examine the Plaintiff's and her witnesses.

10. With the foregoing, I allow the application as prayed.

Dated, signed and delivered in Nairobi this 29th day of May, 2020

B. THURANIRA JADEN

JUDGE