



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL SUIT NO. 604 OF 2010

MARY NYAMBURA KINUTHIA.....1ST PLAINTIFF

GRACE WAIRIMU.....2ND PLAINTIFF

BENARD KIBUNJA(Suing as administratixes &...3RD PLAINTIFF

Administrators of the Estate of the late PETER

KINUTHIA NDIMBI)

- V E R S U S -

BERNARD NJUGUNA.....1ST DEFENDANT

WAMUGUNDA NGATIA.....2ND DEFENDANT

RULING

1) The plaintiffs/applicants herein, filed notice of motion dated 10/7/2017 in which they sought for the following orders.

1. That the plaintiffs be granted leave to amend their plaint in terms of the annexed draft further plaint.

2. That the plaint be deemed as duly fled and served upon the defendants.

3. That the summons be issued as against Benard Njuguna and Wangombe Ngatia.

2) The motion is supported by the affidavit of Joseph Mwaniki Gitau. When Served, the defendants/respondents filed their grounds of opposition to resist the motion.

3) The applicants aver that they filed a compensatory suit by way of plaint in their capacity as the administrators of the estate of the late Peter Kinuthia Ndimbi vide the plaint dated 9/12/2010 and amended on 11/04/2011 against the defendants for the fatal injuries the deceased suffered when he was run over by the defendants motor vehicle.

4) The applicants aver that after a series of investigations and follow up, that the true beneficial owner of the accident motor vehicle registration Number KAM 478V is one Wamugunda Ngatia. It has also been

argued that the insurance Company involved has been misleading the plaintiffs thus hiding the identity of the insured of the aforesaid motor vehicle. There is therefore need for the amendment of the plaint to bring the correct parties in court. The applicants aver that it is in the interest of justice that this application is allowed.

5) The respondents on the other hand aver that the applicants' application is frivolous, vexatious and an abuse of the court process. The respondents further state that the application has been brought outside the timelines of amending pleadings.

6) The overriding consideration in an application for leave for amendment ought to be whether the amendments sought are necessary for the determination of the suit and whether the delay in bringing the application for amendment is likely to prejudice the opposite party. The court under order 8 Rule 3(1) has unfettered discretion to allow amendment of pleadings at any stage of the proceedings on such terms as to costs or otherwise as may be just and in such manner as it may direct. These principles were restated by the court of appeal in the case of **Central Kenya Ltd -vs- Trust Bank Ltd & 5 others [2000]eKLR, where it was held inter alia that,**

"that a party is allowed to make such amendments as may be necessary for determining the real question in controversy or to avoid a multiplicity of suits, provided there has been no undue delay, that no new or inconsistent cause of action is introduced, that no vested interest or accrued legal right is affected and that the amendment can be allowed without injustice to the other side."

7) Save for stating that the application for amendment is highly prejudicial, the respondents have not indicated what prejudice they are likely to suffer if the amendment is allowed. The court in the case of **Central Kenya Limited -v- Trust Bank Limited**, (supra) stated that mere delay is not a ground for declining leave to amend, but that such delay must be one likely to prejudice the other party beyond monetary compensation. In my view, no prejudice which cannot be compensated by an award of costs will be visited upon the Defendants/respondents if the application for amendment is allowed.

8) The plaintiff's Notice of motion dated 10.07.2017 is accordingly allowed as prayed in the following terms:-

- i. The re-amended plaint be filed and served within fourteen (14) days from the date of this ruling.
- ii. The Defendant be served with summons and the re-amended plaint within fourteen (14) days from the date of this ruling.
- iii. The Defendants have leave of fourteen (14) days from the date of service of the re-amended plaint upon them to file their amended statements of defence if need be.
- iv. The Plaintiffs shall pay the costs of application.

Dated, Signed and Delivered in open court this 26th day of January, 2018.

J. K. SERGON

JUDGE

In the presence of:

..... for the Plaintiff

.....for the Defendant