



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

CIVIL CASE NO. 245 OF 2010

Consolidated with

CIVIL CASE NO. 165 OF 2010

1. ABDULGADER SHARIFF SALEH

2. JARMAL SWALEH T/A

JINGO TOURS & SAFARIS.....PLAINTIFFS

VERSUS

1. SOUTHERN CREDIT BANKING CORPORATE LTD

2. KEVIN KARANJA T/A DALALI TRADERS

JOHNSTONE MULI T/A KITHEMU AUCTIONEERS

3. LOFTA RESORT DIANI LIMITED.....DEFENDANTS

R U L I N G

1. The principle the court applies when asked to consider an application for leave to amend a pleading are now well settled. The discretion is wide and unfettered intended, to facilitate the court to receive all the material parties intend to place before the court so that the dispute is dealt with fully and effectively. In ***Stephen Boro Githua vs Family Finance Building Society & Others [2015] eKLR***. The Court of Appeal said:-

“.....We reiterate that where the intended amendments are geared to place full and clear case before the court so that it is effectively and finally determined on its merits, it ought to be allowed for that is the way justice is done”.

2. In so far as this matter is concerned, there have been previous court orders allowing amendments and even though the matter had been fixed for hearing before the plaintiff came up with the application to amend, those are not any fetters to the wide discretion given to court to enable it do justice.

3. Having listened to the parties and in particular, Mr. Wafula Advocate for the defendant, nothing came out as to be able to qualify for dissipating an accrued right to that defendant which cannot be compensated by an award of costs.

4. That being my position and nothing that an amendment can be allowed at any time even on appeal, and being aware that the suit is yet to commence by way of production of evidence, I am persuaded that the interests of justice would be better served by allowing the Application on terms that the plaintiff gets time to amend,

files and serves the amended plaint within 7 days from today.

5. However, the application having been brought after the court had set a date for hearing and having yielded the effect of aborting that hearing as scheduled, I direct that notwithstanding the success by the plaintiff, it shall bear the costs of the application in all events.

Dated and delivered at Mombasa this 26th day of June 2018.

P.J.O. OTIENO

JUDGE