

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

CIVIL SUIT NO. 41 OF 2017

MICRO-CITY COMPUTERS LIMITED.....PLAINTIFF

VERSUS

NATIONAL SOCIAL SECURITY FUND

BOARD OF TRUSTEES.....DEFENDANT

R U L I N G

1. By a notice of motion dated 10/9/2018 and filed in court on 11/9/2018, the plaintiff has approached the court and sought leave that it be allowed to further amend the plaint. The grounds given on the face of the application are that the amendment would assist the court to effectually adjudicate and finally determine all issues in controversy. The application was supported by an Affidavit sworn by PAUL OKOLO ANANGA which reiterates the grounds of the application and exhibits the proposed amendments. That proposed amendment has broken down the sum of Kshs.214,544,200/= claimed in the original plaint and given the particulars of how that figure is made up of.

2. In arguing the application the plaintiff offered oral submission and filed a list of authorities and stressed the fact that there is no prejudice to be occasioned to the defendant as no new allegations have been introduced.

3. The application was opposed by the defendant who filed grounds of opposition and list of authorities. The hallwork of the opposition was that the intended amendment was coming too late in the day after the plaintiffs case had been closed and that it would be prejudicial and unjust to grant leave to amend because the plaintiffs witness had left the witness box having been cross examined on the basis of the pleadings their on record. It was pointed out that PW 1 was on the witness box for three days during which time no issue arose as to the sufficiency of the pleadings on record.

4. Reliance was placed on article 50 of the constitution as commanding that an accused be given all documents to be used at trial before hand and that an amendment at this stage would demand that all proceeding be set aside for matter to begin afresh. Hagod Jack Simona vs Fisher was cited for the proposition of law that an amendment should not be allowed if it visits an injustice on the other party. To counsel the sought amendment entirely changes the character of the suit and wholly changes the position taken in cross examination and therefore would be unjust.

5. The principle of law on amendment of pleadings is that a court of law should allow an amendment if it be intended to bring all the issues in controversy together for the just and effectual determination in order that litigation is not split or truncated and the purpose of the court, to determine the dispute fully and finally, is achieved.

6. In this matter it is true that the plaintiff has led evidence and closed its case. That process proceeded with full participation of the defendant. The same plaintiff now seeks to amend the plaint purely to give details or subheads on how the sum it claims is calculated. Those particulars I do hold are the same in the documents produced as exhibits and upon which the plaintiffs witnesses were duly and exhaustively cross examined. I do not agree with the defendant that the proposed amendments fundamentally charges the face and character of the suit in as much as it doesn't introduce any new allegations of facts.

7. It is to me a sanitation exercise meant to make the claim simpler by dissecting the global sum into parts to make the big whole. I therefore see no prejudice or indeed any hardship likely to be visited upon the defendant if the amendment is allowed.

8. Accordingly, I do allow the application to amend and grant to the plaintiff leave to file and serve the intended amendment within 7 days from today. Once filed and served and for purposes of case management, let the matter be mentioned in court on 19/12/2018 for further direction.

9. I order that the costs of the application be in the cause.

Dated and delivered at Mombasa this 27th day of November 2018.

P.J.O. OTIENO

JUDGE