



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL CASE NO. 164 OF 2009

BHAVEN HARJIVAN KURJI..... PLAINTIFF/APPLICANT

-VERSUS-

TRIVEDI SUSHIL LILADHAR..... DEFENDANT/RESPONDENT

RULING

The plaintiff/applicant brought the application dated the 29th day of June 2017 seeking leave of the court to amend the amended plaint in terms of the draft further amended plaint.

The application is premised on the grounds set out on the body of the same and its supported by the annexed affidavit of Bhaven Harjivan Kurji sworn on the 29th day of June 2017.

In the said affidavit it is deponed that the plaintiff who suffered serious injuries in an accident that occurred on the 31st December, 2006 sought specialized treatment which was available in India at a cheaper rate compared to local treatment. He attended further treatment for a period of over 4 months between 4th November, 2014 to the 21st February, 2015.

That further treatment was sought between 5th November 2016 to 25th January 2017. He has sought leave to amend the plaintiff and claim the medical expenses incurred in the course of the treatment. He avers that the defendant will not suffer any prejudice if the application is allowed as he will have the opportunity to amend his defence.

The defendant has opposed the application by way of grounds of opposition filed on the 28th July, 2017. Counsel for the defendant has averred that the application has been brought under the wrong provisions of the law.

The application is also opposed for the reason that the matter is part heard and though the plaintiff was in possession of all the receipts for the treatment that he has undergone, no good reason has been given to the court why, he did not apply to amend the plaint before the hearing of the case commenced. It is also averred that the defendant will suffer prejudice as he will be forced to take a step backward to verify the receipts. That the defendant had not been informed of the plaintiff's intention to rely on the documents and the application is only meant to delay the finalization of the suit.

The court has considered the application and the submissions by the Counsel. The defendant has raised an issue on the provisions under which the application has been brought and has urged the court to dismiss the same for reason that it has been brought under the wrong legal provisions. In response to this, I wish to note that, the failure to bring the application under the correct provisions is a procedural defect which does not affect the substance and for that reason, the court will excuse the same.

On the merits of the application, as rightly argued by the Counsel for the defendant, the plaintiff had in his possession all the receipts for further treatment that he is now seeking to amend the plaint and introduce. However, the court finds that any prejudice that the defendant may suffer if the application is allowed, can be compensated by costs.

In the premises and in the interest of justice, the application dated 29/6/2017 is allowed, with costs to the defendant. The costs are assessed at ksh. 15,000 to be paid to the defendant before the next hearing date.

It is so ordered.

Dated, Signed and Delivered at Nairobi this 20th day of December, 2017

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L. NJUGUNA

JUDGE

In the presence of:-

.....for the **Plaintiff/Applicant**

.....**for the Defendant/Respondent**