



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KAKAMEGA
CONSTITUTIONAL AND HUMAN RIGHTS DIVISION

PETITION NO. 26 OF 2014

WEST KENYA SUGAR COMPANY LIMITED.....PETITIONER

-versus-

AGRICULTURE FISHERIS & FOOD AUTHORITY.....1ST RESPONDENT

SUGAR DIRECTORATE.....2ND RESPONDENT

ALFRED BUSOLOLO TABU.....3RD RESPONDENT

ROSEMARY MKOK.....4TH RESPONDENT

THE CABINENT SECRETARY, MINISTRY OF

AGRICULTURE, LIVESTOCK & FISHERIES.....5TH RESPONDENT

HON. ATTORNEY GENERAL.....6TH RESPONDENT

BUTALI SUGAR MILLS LIMITED.....7TH RESPONDENT

WILLIAM KOPI & OTHERS.....1ST INTERESTED PARTY

COUNTY GOVERNMENT OF KAKAMEGA.....2ND INTERESTED PARTY

-and-

BUTALI SUGAR MILLS LIMITED.....CROSS-PETITIONER

RULING

1. By the Chamber Summons dated 28th April 2016, the Petitioner seeks leave to amend his Petition in terms of the annexed Amended Petition dated 3rd February 2016 on grounds that the amendment is necessary for purposes of crystallizing the real issues for determination and because the 7th Respondent has disclosed new facts to the petitioner which were not within the petitioner's knowledge.

2. The Petitioner alleges to have brought the application timeously and avers that it is in the interest of justice that the orders sought be granted.
3. It is noted that the application is brought under certificate of urgency pursuant to the provisions of Order 8 Rule 3(1) of the Civil Procedure Rules 2010, Section 3A and Section 100 of the Civil Procedure Act Cap 21 Laws of Kenya.
4. The application is supported by the affidavit of the Petitioner's Managing Director Tejveer Singh Rai in which he gives a history of this case. He avers that they sued the Respondent because the 7th Respondent's manufacturing licence had been cancelled by the Court of Appeal in Kisumu Civil Appeals No.89 and 90/2011. He further depones that the proposed amendments have been informed by the fact that the 7th Respondent had actually been issued with a renewal licence despite the Order of the Court of Appeal. The deponent contends that failure by the 7th Respondent to disclose the fact of the renewal licence constitutes grave abuse of the Court process, subversion of the rule of law and miscarriage of justice, hence the instant application.
5. The application is opposed by the 1st, 2nd, 3rd and 4th interested parties and the 1st, 2nd, 3rd, 4th and 7th Respondents who have also filed grounds of opposition. Only the 5th and the 6th Respondents do not oppose the application.

Submissions and Determination

6. Parties canvassed the application herein by way of written submissions. They also filed authorities in support of their submissions. The only issue for determination is whether to grant leave to the Petitioner to amend its Petition in terms of the annexed amended Petition dated 3rd February 2016.
7. In its submissions the Petitioner has rightly corrected the error on the face of his application. He has now complied with the rules, the application now is deemed to have been brought under the provisions of Rule 18 of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules 2013. This now lays to rest the grounds that the application does not lie at all under the provisions of the Law pursuant to which it has been brought. The said application is thus properly before this Court.
8. The Principles upon which leave for amendment of pleadings can be issued are well stated in case law which both the Petitioner and Respondents have rightly cited. The Respondents and interested parties have given reasons as to why leave should not be granted to the petitioner to amend its Petition.
9. In as much as the issues raised are valid, there is the additional point touching on the alleged issuance of a licence to the 7th Respondent in apparent disregard of the Court of Appeal Orders in Kisumu Court Nos.89 and 90 of 2011. Will this Court close its eyes to that fact and just proceed with this matter as if nothing has happened? It is our considered view that it is necessary to bring on board this new fact that came to the knowledge of the Petitioner after the Petition was filed so that it can be canvassed by all parties during the hearing of the Petition.
10. Counsel in their submissions cited the case of Central Kenya Ltd –vs Trust Bank Ltd and 5 others 2000 e KLR where the Court of Appeal summarized the principles in applications for amendment as follows:

“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 party would be prejudiced to suffer injustice which cannot properly be compensated for in costs.”

11. This Court finds that the proposed amendment herein is necessary and that the Petitioner acted timeously to apply for the same. The argument that the Petitioner is filing a suit within a suit does not, in our view arise. The alleged new facts were discovered after the Petition had already been

filed and was on-going. The issue of costs and delay have also been raised by Counsel in their submissions. It is our humble view that such delay is not likely to prejudice the parties beyond monetary compensation on costs. Accordingly we make orders as follows:-

(a) That Leave be and is hereby granted to the Petitioner to amend the Petition in terms of the annexed amended Petition dated 3rd February 2016 and the said amended Petition be deemed as duly filed and served.

(b) The costs of this application do abide the outcome of the amended Petition.

12. Orders accordingly.

Ruling delivered, dated and signed in open Court at Kakamega this 30th day of June 2016.

RUTH N. SITATI

E.N. MAINA

A.C. MRIMA

JUDGE

JUDGE

JUDGE

In the presence of:

Mr. Orlando For Petitioner/Applicant

Mr. Ochieng h/b for Mr. Kemboy For 1st – 4th Respondent

Mr. Ochieng h/b for Mr. Kemboy For 2nd Respondent

A.G. (absent) For 5th Respondent

A.G. (absent) For 6th Respondent

Mr. Ochieng & Mr. Bwire For 7th Respondent/Cross Petitioner

Mr. Ateka For 1st Interested Party

Mr. Ochieng h/b for Mr. Nyaundi For 2nd Interested Party

Mr. Ochieng h/b for Mr. Menezes For 3rd Interested Party

Miss Aron For 4th Interested Party

Mr. Matete For 5th Interested Party