



REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA AT NAIROBI  
MILIMANI LAW COURTS  
COMMERCIAL & ADMIRALTY DIVISION

CIVIL CASE NO. 312 OF 2011

LALIT KUMAR JAISUKHALAL VAKHARIA.....1<sup>ST</sup> PLAINTIFF

HITENDRA LALIT KUMAR VAKHARIA.....2<sup>ND</sup> PLAINTIFF

ENVELOPE MANUFACTURING ENTERPRISES LIMITED...3<sup>RD</sup> PLAINTIFF

VERSUS

BANK OF BARODA (K) LIMITED.....DEFENDANT

**RULING**

**INTRODUCTION**

1. The Application before the Court is the Plaintiffs' Notice of Motion dated 21<sup>st</sup> October 2014 and filed on 24<sup>th</sup> October 2014. It is expressed to be brought under the provisions of Order 8 Rule 3 and Order 51 Rule 1 of the Civil Procedure Rules as well as Sections 1A, 1B and 3A of the Civil Procedure Act. It seeks the following prayers:-

- 1. That the Plaintiffs be granted leave to amend the Plaintiff herein in terms of the proposed Amended Plaintiff annexed hereto.*
- 2. That pursuant to prayer 1 above being granted, the proposed Amended Plaintiff annexed hereto be deemed as duly filed and served.*
- 3. That the costs of this Application be in the cause.*

**PLAINTIFFS' CASE**

2. The application is based on the grounds stated therein and is supported by the Affidavit of the 2<sup>nd</sup> Plaintiff sworn on 21<sup>st</sup> October 2014.

3. The Plaintiffs case is that it has become necessary to amend the Plaintiff so as to include the amount overcharged on the 3<sup>rd</sup> Plaintiff's account by the Defendant. The Plaintiffs aver that the claim on the amount overcharged arises from the same cause of action. It is also their case that the amendment will enable the Honourable Court to fully and finally adjudicate on all matters.

**DEFENDANT'S CASE**

4. The Defendant did not put in any written response in opposition to the application. However, on 2<sup>nd</sup> March 2015 when the application came up for hearing, Counsel for the Defendant opposed the application on the Defendant's behalf.

5. It was the Defendant's case that the amendment sought by the Plaintiff would bring in other parties. Counsel submitted that the said parties were limited liability companies with capacity to sue and to be sued. It was also the Defendant's case that the amendment would not allow the Court to determine the real issue in controversy as it would cause pandemonium in the suit. On that basis Counsel urged the Court to dismiss the current application.

## **LEGAL ANALYSIS**

6. I have considered the application as well as oral submissions by Counsel in support and in opposition to the application. Having done so, I take the following view of the matter.

7. The general rule is that all amendments should be freely allowed at any stage of the proceedings provided that the amendment or joinder does not result in prejudice or injustice to the other party that cannot be properly compensated for in costs. In the case of **EASTERN BAKERY VERSUS CASTELINO (1958) EA** the Court held *inter alia* that:-

***“amendments to pleadings sought before hearing, should be freely allowed if they can be made without injustice to the other side and there can be no injustice if the other side can be compensated by costs.”***

8. The Defendant's main contention is that the amendment will bring new parties which are limited companies capable of suing and being sued. See paragraph 21A of the annexed amended Plaintiff. To this end, Counsel for the Plaintiff submitted that the shareholders in those companies were the same and that they guaranteed each other to get facilities from the Defendant Bank. This includes the 3<sup>rd</sup> Plaintiff Company. Therefore, this Court does not foresee any introduction of new parties. Even if there was introduction of new parties, the Defendant has not demonstrated what prejudice it would suffer. This Court is satisfied that the amendments arise from the cause of action and that the amendments will allow the Court to fully and finally adjudicate on the matter.

## **DISPOSITION**

9. In the circumstances foregoing, the upshot of this court's ruling is that the Plaintiffs Notice of Motion dated 21<sup>st</sup> October 2014 and filed on 24<sup>th</sup> October 2014 is merited. The same is therefore allowed on the following terms:-

***a. The Plaintiffs are hereby granted leave to amend the Plaintiff herein in terms of the proposed Amended Plaintiff annexed hereto.***

***b. The proposed Amended Plaintiff annexed hereto be deemed as duly filed and served upon payment of requisite filing fees.***

***c. The Defendants are at liberty to amend and file their amended defence within 14 days of service of the amended Plaintiff.***

***d. That the costs of this Application be in the cause.***

Orders accordingly.

**READ, DELIVERED AND DATED AT NAIROBI THIS 30TH DAY OF APRIL 2015**

**E. K. O. OGOLA**

**JUDGE**

**PRESENT:**

M/s Areri holding brief for Nyaaga for the Applicant

Mr. Odoyo for the Respondent

Teresia – Court Clerk