



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI**  
**COMMERCIAL & ADMIRALTY DIVISION**  
**CIVIL SUIT NO. 768 OF 2010**  
**ZEPHANIA NGAIRA ANGWEYE.....PLAINTIFF/APPLICANT**  
**VERSUS**  
**RODGERS SENAJI MULEMI.....1ST DEFENDANT/RESPONDENT**  
**BARCLAYS BANK OF KENYA LIMITED...2ND DEFENDANT/RESPONDENT**

**R U L I N G**

**INTRODUCTION**

1. The **Notice of Motion** before the Court is dated **27th January 2015** and filed in court on 2nd February 2015. It seeks as the main prayer that leave be granted to the Plaintiff to amend his Plaintiff in terms of the draft amended Plaintiff annexed to his supporting affidavit. The application is premised on the grounds that the Plaintiff is desirous of amending the Plaintiff as proposed to bring to force the real and current issues in controversy between the parties.
2. The application is supported by the affidavit of the Plaintiff dated 27th January and filed in Court on 2nd February.

**THE APPLICANTS CASE**

3. The Applicant's case is that after perusal of the 1st Defendant's pleadings and affidavits in reply to the application for injunction it became necessary to amend the plaintiff to reflect the true and current position of this matter. The plaintiff has been amended in terms of the draft amended plaintiff annexed hereto and marked "ZNA" which sets out in sufficient detail the proposed amendments. The proposed amendments are intended to bring to the fore the real and current issues in controversy between the parties to the proceedings for final adjudication. The proposed amendments are intended to bring out the various frauds that were committed in relation to the suit premises. The Applicant states that no prejudice will be occasioned to the Defendants if this application is allowed, and that the amendments are necessary to enable the case to be heard on its merits.

**ANALYSIS AND DISPOSAL:**

4. The application is not opposed. The 1st Defendant, despite being served with the application pursuant to the affidavit of service dated and filed in Court on 15th April 2015, has not deemed it fit to respond to

the application, while the 2nd Defendant ceased to have any interest in this matter and with the leave of this court has since stopped attending these proceedings.

5. The issue for this court to determine then is whether the application is merited. Under the Civil Procedure Rules, an amendment can be allowed by the court at any time of proceedings before a judgement is pronounced provided such amendment does not cause prejudice to the Respondent. I have perused the annexed draft of the proposed amended Plaint. The issues raised are those that will help this court to determine all the issues before the court. The amendments will also not cause any prejudice to the 1st Defendant.

6. Pursuant to the foregoing paragraphs of this ruling, the Notice of Motion application herein dated 27th January 2015 and filed in court on 2nd February 2015 is allowed with costs in the cause.

Orders accordingly.

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

**E. K. O. OGOLA**

**JUDGE**

**PRESENT:**

Mr. Muhindi holding brief for Khaminwa for the Plaintiff

No appearance for the Defendants

Teresia – Court Clerk