

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

CIVIL SUIT NO. 136 OF 2006

KITANO CHACHA.....PLAINTIFF

VERSUS

UGANDA RAILWAYS CORPORATION.....RESPONDENT

RULING

The plaintiff/applicant application dated 12-4-2013 prays to be granted leave to amend the plaint dated 5-7-2000 to include one Mukombozi Fishing and Marine Transport Company Limited as the 2nd plaintiff. The applicant has argued that upon consulting his counsel on record he was of the considered opinion that the said company be enjoined as a plaintiff. The applicant has sworn affidavits with attached annexures to support his claim.

The defendant has filed several grounds of opposition. Substantially the respondent sees the amendments as coming too late in the day and is meant to delay the speed conclusion of this case.

This court has so far heard three plaintiff's witnesses and it was due for further hearing. The law expects every party by the time it calls its witnesses to have determined the rest of its witnesses and the parties to the suit generally.

From the application at hand for whatever reason the plaintiff failed to include the intended co-plaintiff. What is the net effect if the application is allowed? Shall the defendant suffer any prejudice? The defendant has argued that this court does not have the requisite jurisdiction to entertain this application. I do not think this is true. The court is expected to allow such amendments under the provisions of order 8 (3) of the Civil Procedure Rules subject to such terms that may be just and expedient.

What prejudice shall the defendant suffer? I do not think that there is any. The defendant shall in any case have the opportunity to cross examine or recall any witness during the proceedings. Luckily the plaintiff had not closed his case. Leave should be granted unless it shall cause an injustice to the other side. Equally, if the application is brought in bad faith then the court shall always frown against such application. See **Mwakio -VS- Kenya Commercial Bank Ltd [1987]eKLR 513.**

This court is therefore persuaded that no prejudice shall be suffered should the amendment be carried out as prayed by the applicant. In the premises the application is allowed. The applicant is granted 14 days to amend its plaint and the defendant granted 14 days to respond to the same if need be after service.

Costs of this application to the defendant/respondent.

Dated, signed and delivered at Kisumu this 31st day of July, 2014.

**H.K.
JUDGE**

CHEMITEI