



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL & ADMIRALTY DIVISION
CIVIL SUIT NO.456 OF 2000

EQUITY BUILDING SOCIETY.....PLAINTIFF

-VERSUS-

GEORGE NJIRAINI NG'ANG'A

T/A VERAM AGENCIESDEFENDANT

R U L I N G

1. The application before the court is a Notice of Motion dated 8th April 2014. The application seeks the following Orders:
 - a. That the Honourable court be pleased to grant leave to the Plaintiff to further amend its Plaint in terms of the Further Amended Plaint annexed.
 - b. That the Amended Plaint be deemed as duly filed and served.
 - c. That the costs of this application be provided for.
2. The application is supported by Affidavit of **AMBROSE MAKANGA NGARI** dated 8th April 2014.
3. The application is opposed by the Defendant vide Grounds of Opposition dated 10th June 2014.
4. The application was dispensed with by way of written submissions. The Plaintiff filed submissions dated 23rd June 2014 while the Defendant filed submissions dated 10th June 2014.
5. The Plaintiff submitted that the application is further grounded on the Affidavit of Ambrose Makanga Ngari, the Plaintiff/Applicant's General Manager, annexed to the application. **Mr. Ngari depones in his Supporting Affidavit that the Plaintiff, Equity Building Society converted into a Bank on the 31st day of December 2004** and changed its name to Equity Bank Limited. The usage of the new name was approved by the Minister of Finance as is clear from the Exhibit marked "AMN 1". Besides the change of name, the Plaintiff/Applicant also sought leave to the Minister to transfer the assets, liabilities and business of the Plaintiff to Equity Bank Ltd. A Notice was duly published in the Kenya Gazette on the 28th January 2005 as Gazette Notice No.652. The same is annexed to the Supporting Affidavit as AMN 1(A). The said notice clearly stipulated that???"**Equity Building Society (EBS) carrying on the business of a Building Society...converted into a Bank with effect from 31st December 2004 (the transfer date) by**

transferring all its business, assets and liabilities to Equity Bank Ltd???" The Notice states, *inter alia*, that from the transfer date:-

- a. Equity Bank Ltd took over all the business and assets of Equity Building Society and assumed all liabilities incurred by Equity Building society up to the transfer date.
- b. All debts payable by or to Equity Building Society became debts payable by or to Equity Bank Ltd.

6. The Defendant filed Grounds of Opposition stating that Equity Building Society and Equity Bank Limited are entirely and or absolutely distinct separate legal entities and therefore Equity Bank Limited having taken over all the business, Assets and Liabilities of the Plaintiff as at 31st December 2004 no court proceedings could legally continue in the name of Equity Building Society, and that the amendment sought being made after more than ten years is not tenable as the suit has already abated.

7. I have carefully considered the written submissions of the parties. While I agree with the Defendant's submissions that the delay in seeking to amend the Plaint to bring the proper party is unreasonable, I do not agree with the Defendant's submissions that the suit has abated. A suit does not rot once filed in court. It is clear that the Plaintiff changed its name to Equity Bank. A clear and proper legal channel was followed when a Notice was duly published in the Kenya Gazette on 28th January 2005 as Gazette Notice No.632. They gave particulars of the change and stated clearly that Equity Bank took over all the business and assets of Equity Building Society and assumed all the liabilities incurred by Equity Building Society upto the transfer dated. It also stated that all debts payable by or to Equity Building Society became debts payable by or to Equity Bank Ltd. The foregoing makes it clear that the proper party in this suit is now Equity Bank Ltd. The only issue is the delay. The Plaintiff has not explained the delay which appears quite unreasonable.

8. Under Order 8 Rule 3(1) (2) (3) and (5) the court has made powers to enable it dispense justice equitably and fairly. The Defendant was allegedly advanced a loan by the Plaintiff sometime in the year 1997. Part of that loan, now being claimed in the Plaint, has been outstanding. If the Defendant had believed that the Plaintiff was not the proper party herein, even the Defendant had the obligation to apply to have the suit dismissed.

9. In the exercise of my discretion, I allow the application as prayed except that the cost which I assess at Kshs.15,000/= shall be paid by the Plaintiff to the Defendant within 14 days of the date of this ruling.

Orders accordingly.

Dated, Read and Delivered at NAIROBI this 26th Day of September 2014.

E.K.O OGOLA

JUDGE

PRESENT:

M/S. Omulupi for Plaintiff/Respondent

Absent for Defendant/Applicant

Teresia – Court clerk