



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI COMMERCIAL & ADMIRALTY DIVISION
CIVIL CASE NO. 79 OF 2010

BM LOGISTICS LTD.....PLAINTIFF/APPLICANT

VERSUS

KENYA NATIONAL BUREAU OF STATISTICS....DEFENDANT/RESPONDENT

BULK MOVERS AND LOGISTICS (EA) CO. LTD.....INTERESTED PARTY

R U L I N G

1. The Notice of Motion application before the court is dated **23rd September 2014** filed under Order 3 Rule 2, Order 8 Rule 3 of the Civil Procedure Rules, 2010 and Section 1A, 1B, and 3A of the Civil Procedure Act.

2. The applications seeks the following orders:-

1. *That the Plaintiff be granted leave to amend the Plaintiff dated 11th February 2010.*
2. *That the Plaintiff be granted leave to file a supplementary list of documents and witness statements.*
3. *That the Plaintiff be granted leave to file and furnish witness statements by experts at least 15 days prior to the Pre-Trial Conference.*
4. *That the costs be reserved.*

3. The application is premised on the grounds set out therein and is supported by affidavit of **Michael Mbito** dated **23rd September 2014**, which affidavit also has annexed to it the draft amended Plaintiff.

4. The application is opposed by the Defendant/Respondents who filed Grounds of Opposition on 24th September 2014.

5. The brief history of the application is that by a suit filed herein on 12th February 2010 the Plaintiff claimed a sum of Kshs.43,000,000/= against the Defendant, amongst other prayers. The Plaintiff now alleges that it has become necessary to amend the Plaintiff because there have been proceedings in various courts which are relevant to the proceedings herein and that the records of those proceedings need to be exhibited before this court by a supplementary affidavit.

6. Before the current application, the Applicant had earlier filed a similar application dated 30th July 2014, which the Applicant withdrew vide withdrawal notice dated and filed in court court on 23rd September 2014. The Defendant/Respondent, in opposing the application has stated that the present application is an abuse of the process of the court, the Plaintiff having made a similar application dated

30th July 2014, which application is still on record, notwithstanding that the Plaintiff purported to withdraw the same by notice. The Applicant has not given any reason as to why he wants to withdraw the application dated 30th July 2014, hence it is mischievous of the Applicant to come up with a similar application. The Respondent added that it was not open to the Plaintiff to withdraw the application dated 30th July 2014, without the consent of all parties or without leave of this court. The Notice to withdrawal/discontinuance of the application was null and void and of no effect, and that the Notice of Motion application dated 23rd September, 2014 is fatally defective and incompetent, and that the said application is misconceived, unmeritorious, frivolous and vexatious.

7. I have considered the application. Although the Plaintiff/Applicant has not given excellent reasons as to warrant the amendment of the Plaint, especially what factors necessitates the need to amend the claim from Kshs.43,000,000/= to over Kshs.70,000,000/=, this court has noted that there are indeed other proceedings in other courts, including the proceedings in the Nairobi Anti Corruption Court Case No. 11 of 2012 the subject matter of this Court's Ruling delivered on 10th December 2013, which made it appear a reasonable request, that the Plaintiff/Applicant may wish to amend its pleadings and supply more documentary evidence.

8. Equally, I have noted that the Defendant/Respondent has not at all attacked the grounds upon which the Plaintiff seeks to amend the Plaint. The Defendant has instead concentrated effort on one rather not too important an issue, that is, that the current application is fatally defective without explaining how, and that the Applicant has not given any reasons for the withdrawal of the application dated 30th July 2014.

9. In my view, the application should be allowed if only to avoid a possible need for another suit to address the common issues between the parties but which are not in the current Plaint. In addition, I am satisfied that the Plaintiff may need to add more documents to its bundle of documents already filed. Lastly, this court has the inherent jurisdiction to allow amendment so as to do complete justice to parties before the court.

10. In the upshot, I make the following orders:-

- a. ***The Plaintiff's application is allowed as prayed except that costs assessed at Kshs.10,000/= shall be for the Defendant and payable within 7 days of this Ruling.***
- b. ***The Defendant shall have 10 days within which to file an Amended Defence if need be.***

Orders accordingly.

READ, DELIVERED AND DATED AT NAIROBI THIS 31ST DAY OF OCTOBER 2014

E. K. O. OGOLA

JUDGE

PRESENT:

No appearance for the Plaintiff/Applicant

No appearance for the Defendants/Respondents

Irene – Court Clerk