

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NUMBER 622 OF 2006

MANISH KUMAR SHAH.....PLAINTIFF

VERSUS

TELKOM KENYA LIMITED.....1ST DEFENDANT

HURON MOHAMMED JARO.....2ND DEFENDANT

R U L I N G

In this matter the Plaintiff was giving further evidence. The suit is an old one and had been partly heard by two or so judges before it was placed before me. The Plaintiff had once been amended by the request of the Plaintiff and with the leave of court. It is probable that the particulars of the special damages were in the process amended too.

It is noted that after the amendment of the plaint the defence was also amended to include denials of the amended special damages figures. When the Plaintiff resumed his testimony after closing his examination in chief and was being cross-examined, he realized that he had not included adequate evidence to cover the special damages claim. He then orally made the application seeking leave to return to the witness box and testify further and also be allowed to put in further documentary evidence.

As expected, the application was strongly opposed by the Defendant on the ground that it was too late in the day and that since the amended defence included denial of the amended special damages, the Plaintiff should have realized that proof of the particulars introduced would be part of his case.

I have carefully considered the application and opposing grounds' and have no doubt in my mind that the Plaintiff's application is a little belated. However, refusing the application will definitely shut out the major part of the Plaintiff's claim. I have considered the history of the case which has gone through the hands of several judges and is an old case. The effect of Order 11 came after the 2010 amendment of the rules and there was a leeway left to parties to embrace the order or not.

In these circumstances, I have considered the prejudice the granting of the oral application would cause on the Defendant and whether the same can be compensated in costs. I have come to the conclusion that instead of denying the Plaintiff the full opportunity to put his case, I should on the contrary, allow him opportunity to return to the witness box as well as allow him to put in supplementary affidavit carrying additional documentary evidence. I will, however, also grant the Defendant not only opportunity to file a responding affidavit with any defending documentary evidence, but also compensatory award of costs.

Orders:

1. Application to put in additional list of documentary evidence and give further testimony granted, the same to be done within 14 days.

2. The Plaintiff shall pay defendant costs arising from the delay brought about by the granting of this application assessed at Ksh.10,000/- in any event on or before hearing of the suit resumes or within 21 days, whichever comes earlier.

3. Mention on 11th December, 2014 for further directions.

Dated and delivered at Nairobi this 18th day of November, 2014.

.....

D A ONYANCHA

JUDGE