



REPUBLIC OF KENYA

High Court at Nakuru

Civil Case 340 of 2009

BENJAMIN KIPSORNO KOMEN.....1ST APPLICANT/PLAINTIFF

JOYCE TAPLULEI.....2ND APPLICANT/PLAINTIFF

JEREMIAH CHEPKEITANY.....3RD APPLICANT/PLAINTIFF

VERSUS

HENRY KIBET ROTICH.....RESPONDENT/DEFENDANT

RULING

By dint of **Section 100** of the **Civil Procedure Act** and **Order 8** of the **Civil Procedure Rules**, the court has jurisdiction at any stage of the trial (except with regard to judgment) or even on appeal to amend pleadings for the purpose of determining the real question or issue in a dispute. But in applying to amend pleadings, the applicant must act in good faith; the exact nature of the proposed amendment must be formulated and submitted to the other side and to the court; if the court is not satisfied as to the truth and substantiality of the proposed amendment, it ought to be disallowed; the proposed amendment must not be immaterial or useless or merely technical. These principles enunciate in **Joseph Ochieng' V. First National Bank of Chicago**, Civil Appeal No.149 of 1991 among other principles, must be satisfied before an application for amendment can be allowed.

In the instant chamber summons, the applicant, Peter Komen seeks an amendment to the plaint to include him as the 4th plaintiff. In an affidavit to support the application, counsel for the applicant has simply deposed that he is familiar with the facts of the case and that after taking further instructions from the plaintiffs, it has become necessary to amend the plaint. Clearly, no reasons have been advanced for wanting to joint Peter Komen.

Apart from seeking to join Peter Komen, the application proposes minor amendment to paragraph 6 of the plaint to the effect that, due to the fraudulent and illegal actions of the defendant, the plaintiffs have suffered loss and damages.

The respondent has opposed the application arguing that it is only meant to delay the determination of H.C.C.C. NO.340 of 2009 and that the proposed amendments are not crucial in the determination of the dispute herein and will be prejudicial to the respondent and the beneficiaries of the estate of their deceased father.

Without disclosing who Peter Komen is and what interest he has in the matter, the applicants have failed to satisfy the principles in **Joseph Ochieng'** (Supra)

In the result, this application fails and is dismissed with costs.

Dated and Signed at Nakuru this 18th day of January, 2013.

**W. OUKO
JUDGE**

Dated, Signed and Delivered at Nakuru this 29th day of January, 2013 by Hon. Justice M. J. Anyara Emukule.

JUDGE