



REPUBLIC OF KENYA

High Court at Nakuru

Civil Case 526 of 2000

RAHAB WANJIRU NDERITU.....APPLICANT

VERSUS

DANIEL MUTETI.....1ST RESPONDENT

NATION MEDIA GROUP LIMITED.....2ND RESPONDENT

BERNARD MUENDO KYENZE.....3RD RESPONDENT

HON. EKWE ETHURO.....4TH RESPONDENT

MUSYOKA NGUKU.....5TH RESPONDENT

AKAMBA PUBLIC ROAD SERVICES LIMITED.....6TH RESPONDENT

RULING

The applicant has since 3rd June, 2010 been seeking to amend the plaint. She was given 14 days from 3rd June, 2010 to do so. She did not comply hence her application of 1st July, 2010 for enlargement of time to file the amended plaint.

By a ruling delivered on 4th November, 2011, the court allowed the applicant to file an amended plaint within seven (7) days. Once more there was no compliance with that leave and no amended plaint was filed. Instead, the applicant has yet again filed the instant motion for orders that time be enlarged for filing the amended plaint. The application is premised on the grounds that the seven (7) days granted for the filing of the amended plaint was not sufficient to enable counsel to reach the applicant for the purpose of obtaining her instructions; that the delay was not intentional; that the applicant only gave counsel instructions on 17th November, 2011 and signed the verifying affidavit.

In opposing the application, the respondents filed grounds of opposition in which it is contended, among other things, that:

- i) the application has been brought under inapplicable provisions of the law;
- ii) the orders sought are embarrassing and bad in law;
- iii) no grounds have been advanced to justify the granting of the orders sought;

- iv) there has been delay in bring this application which delay has not been explained and;
- v) the application is an abuse of the process of the court.

I reiterate that the applicant filed this action in September, 2000. Twelve years later, the suit is still pending due to what is clearly the negligence of her counsel, who first sought to amend the plaint on 17th June, 2010 – ten years after the suit was filed.

The nature of the intended amendments are so formal that one cannot understand why after the court, on 4th November, 2011, granted leave to have the amended plaint filed and served within 7 days, the applicant failed to comply. The explanation that the applicant was unavailable to sign the verifying affidavit is not convincing.

However, I have looked at the pleadings and bearing in mind that this is a fatal accident claim and the amendments sought being central to the claim, it is my view that greater ends of justice will be served by extending further time to the applicant to comply with earlier orders, as the mistake is clearly that of her advocate. I have also considered that the respondents had filed amended statements of defence in response to the proposed amended plaint, hence they will not suffer any prejudice. The inconvenience caused to them can be compensated by an award of costs.

For the foregoing reasons, this application is allowed. The amended plaint must be filed and served within seven (7) days from the date of the delivery of this ruling.

Costs awarded to the respondents

Dated and Signed at Nakuru this 17th day of January, 2013.

**W. OUKO
JUDGE**

Dated, Signed and Delivered at Nakuru this 5th day of February, 2013 by Hon. Justice M. J. Anyara Emukule.

JUDGE