



REPUBLIC OF KENYA

High Court at Mombasa

Commercial Civil Case 4 of 2011

WILHELM GEB. KOWNATZKI.....PLAINTIFF

VERSUS

1. PURITY MAKAMBI

2. MAX MAKAMBI.....RESPONDENT

RULING

The plaintiff/applicant filed this notice of motion dated 14th August, 2012 seeking the court's leave to amend the plaint filed in court on 26th January, 2011. The proposed Amended Plaint was annexed to the application.

On their part the defendant/respondents filed a Notice of Objection dated 13th September, 2012 urging the court to deny the applicants the leave sought.

Both parties filed their written submissions with respect to this application. I have read and have carefully considered the written submissions. On the question of amendments to pleadings this court is guided by Order 8 rule 3(1) of the Civil Procedure Rules which provides:

“3(1) Subject to Order 1 rules 9 and 10, Order 24 rules 3, 4, 5 and 6 and the following provisions of this rule, the court may at any stage of the proceedings, on such terms as to costs or otherwise as may be just and in such manner as it may direct, allow any party to amend his pleadings.”

As a general rule the courts would allow a party to amend their pleadings unless it can be shown that the application is made *malafides*, without cause, as a delaying tactic or in abuse of court process. This view is buttressed before the ruling on the case of **MEDITERRANEAN SHIPPING COMPANY S.A. – VS. KENYA PORTS AUTHORITY** Civil Case No. 148 of 2004 in which Hon. Justice L. Njagi (as he then was) cited the case of **EASTERN BAKERY VS CASTELINO [1958] E.A. 461** where it was held:

“It will be sufficient to say that amendments to pleadings sought before the hearing should be freely allowed, if they can be made without injustice to the other side, and there is no injustice if the other side can be compensated by costs.....the court will not refuse to allow an amendment simply

because it introduce a new case.....”

By the proposed amendments the applicant merely seeks to elucidate on the Breach of Trust which was already pleaded in clause 11 of the original plaint filed on 26th January, 2011. In my view there would be no prejudice suffered by the respondent if the amendment was allowed. Further, I do find that the application for leave has been sought timeously since the main hearing has not commenced. As such, I do allow this present application for leave to amend the plaint. The amended plaint to be filed and served within seven (7) days of today’s date. Costs in the cause.

Dated and delivered in Mombasa this 15th day of April, 2013.

M. ODERO

JUDGE

In the presence of:

Mr. Munyithya for Plaintiff/Applicant

No appearance for Respondent

Court Clerk Mutisya