

REPUBLIC OF KENYA

High Court at Kakamega

Civil Appeal 7 of 2012

SOLOMON KINOTI T/A BUNYORE ESCORT 1ST APPELLANT

FRANCIS KIRWA MAGUT 2ND APPELLANT

KENYA COMMERCIAL BANK LTD. 3RD APPELLANT

V E R S U S

VICTORIA AMBIYO ODARI RESPONDENT

RULING

The appellants/applicants are the defendants in Hamisi RMCC No.49 of 2008. By an application dated 30th September 2011 they sought leave of the court to amend the defence on record. That application was dismissed by the trial court and that decision triggered the filing of this appeal. The appellants filed the application dated 16th January 2012 seeking orders that there be a stay of proceedings in the lower court case pending the hearing and determination of the appeal. Counsel for the applicants submitted that the trial court was wrong as the proposed amendments were necessitated by the finding of crucial information which is relevant for the adjudication of the matter. The matter is pending and has not been heard.

Counsel for the respondents opposed the application and submitted that it is intended to deny the plaintiff justice. The case before the trial court was filed in 2008 and the applicant has put a lot of hurdles on the respondent who is a minor. The ruling being appealed against has not been annexed and that the application does not meet the conditions set out in Order 42 rule 6 of the Civil Procedure Rules. Counsel further submitted that there was an order that had stayed all cases against the insurance company that was later vacated.

I have gone through the application by the appellant as well as the replying affidavit together with all the annexures. It appears that although the suit was filed in 2008 there was an order staying the proceedings. The application for amendment was made in September 2011 and the ruling was delivered on 15th December 2011. I have gone through the proposed amended defence and do find that the same had raised several issues. Since I am not dealing with the appeal itself, I will not comment on the issues raised in the proposed amended defence. Counsel for the respondent contends that the appellants have contributed to the delay in the hearing of the case. I do find that had the respondents allowed the application to amend by consent the matter would have proceeded to its conclusion by now. I do find the current application to be merited as the suit before the lower court has not been heard. For purposes of facilitating a quick finalization of the appeal I do order that the applicants file their record of appeal within thirty (30) days hereof. Thereafter the matter to be listed for directions within thirty (30) days.

In the end the application dated 16th January 2012 is hereby granted as prayed. Each party to meet his own costs.

Delivered and dated at Kakamega this 25th day of July 2012

**SAID J. CHITEMBWE
J U D G E**