



IN THE HIGH COURT OF KENYA

AT NAKURU

CIVIL CASE NO. 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

On 3rd of June, 2010, the court allowed the applicant to file an application for the amendment of her plaint within 14 days from that day. No amendments were made as ordered. Instead, on 1st July, 2010, this application was brought by the applicant for orders that she be granted leave to amend the plaint out of time and to deem as duly filed and served within time the draft annexed amendment plaint. In the alternative, the applicant prays that time be extended for the filing of the amended plaint.

The application is premised on the grounds that the amendments sought are necessary for the interest of justice and for the purpose of determining the real questions in controversy; and that the proposed amendment will not occasion any prejudice or injustice to the respondents. All the respondents have not replied or filed grounds of objection. But the 1st and 2nd respondents have filed a notice of preliminary objection, which was filed on 5th October, 2010 and served on the date the application came up for arguments. The objection is to the effect that the application is incompetent for three reasons:

1. that the applicant has failed to comply with the order of the court of 3rd June, 2010
2. that the proposed amendment is intended to prolong and perpetrate the defects in the applicant's claim as framed in the plaint of 15th September, 2000 and
3. that the proposed amendments introduce materials which offend against the **Limitation of Actions Act** and the **Fatal Accidents Act**.

I have considered the foregoing arguments. I reiterate that on 3rd June, 2010, the applicant was granted leave to file application for amendment of the plaint. The present application has therefore been filed

pursuant to that leave. It was filed on the 1st July, 2010, after nearly one month from the date leave was granted but about 14 days after the date it ought to have been brought.

The court has general power to order for the amendment of pleadings at any stage in such terms as may appear to it to be just. Similarly, the court has an unfettered discretion to enlarge time limited for doing anything. Specifically, **Order 49 rule 5** of the **Civil Procedure Rules** provides that the discretion is only subject to such terms (if any) as the justice of the case may require; that such enlargement may be ordered although the application for the same is not made until after the expiration of the time appointed or allowed subject to costs.

My understanding of the objection to this application is two- pronged; that it was brought after the expiration of the time limited by the court and secondly that the original suit is defective. Although the last issue appears to relate to the question of jurisdiction, it is doubtful if it can be raised as a point of preliminary objection.

There is no doubt that this application has been brought after the time granted had expired. The court can extend the time subject to costs to the respondent. The applicant's only undoing is her failure to explain the failure to comply with the orders of 3rd June, 2010. The delay was not inordinate and no prejudice will be suffered by the respondents.

For these reason, I allow the application and enlarge time within which application for amendment may be brought. The applicant is ordered to file and serve the aforementioned application within 14 days from the date of this order.

She will pay costs of this application to the 1st and 2nd respondents.

Dated, Delivered and Signed at Nakuru this 31st day of January, 2011.

W. OUKO

JUDGE