

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
DIVORCE CAUSE NO.15 OF 2006

CVAAS.....PETITIONER

VERSUS

SVKS.....RESPONDENT

R U L I N G

The respondent filed an application pursuant to the provisions of **Rule 14** of the **Matrimonial Causes Act** and “*all the enabling provisions of the law*” seeking the leave of this court to be allowed to amend his answer to the petition and cross-petition filed herein in terms of the draft amended answer to the petition and cross-petition annexed to the application. The respondent further prayed that the draft amended answer to the petition and cross-petition be deemed as duly filed and served on the parties. The application is supported by the annexed affidavit of the respondent. The application is opposed. The petitioner filed a replying affidavit in opposition to the application.

Prior to the hearing of the application, Counsel for both parties filed written submissions in support of their respective clients’ opposing positions. At the hearing of the application, I heard oral submissions made by Mrs. Thongori for the respondent and by Mr. Osmond for the petitioner. The issue for determination by this court is whether the respondent made a case to entitle this court grant the application to amend his answer to the petition and his cross-petition. As a general rule, this court will freely allow a party to amend his pleadings before trial unless it is established that such proposed amendments will prejudice and oppress the opposing party. As was held by Ringera J (as he was then) in **Macharia vs Guardian Bank Kenya Limited [2003] KLR 271** at page 274:

“The law is well settled that amendments sought before trial should be freely granted if they are necessary to put the facts in dispute between the parties before the court for a proper adjudication of the matter and if there would be no injustice to the adverse party. In the latter regard, it is well established that there can be no injustice if the prejudice to the adverse party can be compensated by an order of costs.”

In the present application, it was evident in court that the issues that are of concern to the petitioner in the proposed amendments can be adequately addressed when the petitioner is given an opportunity to respond to the pleadings contained in the proposed amendments. This court is of the view that the petitioner will not be prejudiced in any manner by the proposed amendments other than in regard to the fact that her counsel has been compelled to attend court during the hearing of this application. In that regard, the petitioner can adequately be compensated by an award of costs.

In the premises therefore, the respondent is granted leave to amend his answer to the petition and cross-petition in terms of the draft amended answer to the petition and cross-petition annexed to the affidavit in support of the application. The said amended answer to the petition and cross-petition shall be filed and served within fourteen (14) days of today's date. The petitioner shall be at liberty to file a response to the said amended pleadings within fourteen (14) days after service. The respondent shall pay to the petitioner the costs of the application in any event.

DATED AT NAIROBI THIS 11TH DAY OF FEBRUARY, 2011

L. KIMARU
JUDGE