



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI COMMERCIAL COURTS)
Civil Case 129 of 2007

MATHIAS NASUBO OGAMA PLAINTIFF

VERSUS

REBMAN AMBALO MALALA DEFENDANT

RULING

1. The plaintiff filed the chamber summons dated 19th October 2009 seeking for leave to amend the plaint in terms of the draft annexed to the application. This application is based on the grounds that at the time of filing the suit, an income of Ksh.133.509,962/- had not been declared as money due to **Ugenzi Consultant** where the plaintiff and the defendant were partners. The plaintiff and the defendant had entered into a partnership agreement called **Ugenzi Consultant**.
2. The plaintiff retired from the partnership and it was agreed that he would be paid certain sums of money as per an agreement dated 19th May 2005. By that time the partnership had a claim against the National Hospital Insurance Fund which was subject of arbitration. An award was made on 18th May 2007, where the partnership was awarded a sum of Ksh.133.509,962/- which the plaintiff now intends to include in this suit as he claims 50% of the said sum.
3. This application was opposed by the defendant who relied on the matters deposed to in his replying affidavit sworn on 10th December 2009. Counsel for the respondent further argued that the parties had signed an agreement which captured the plaintiff's claim. The partnership was also governed by a deed of partnership. By introducing a new claim that would be tantamount of altering the contract as the issue of the money is a new issue. The parties having entered into an agreement the plaintiff is estopped from raising matters which were not captured in the agreement.
4. This application seeks to amend the pleadings and according to the plaintiff the amendment sought was necessitated by an award made in favor of the partnership after the suit had been filed but for work which was done while the partnership was on going. Although the suit by the plaintiff is based on an agreement, the intended amendment seeks to introduce another claim by the plaintiff against the defendant. The whole purpose of amending the pleadings apart from curing a defect is to bring out all the issues in controversy for determination by the court.
5. If the plaintiff is not allowed to amend the pleadings, this would necessitate the filing of a fresh suit against the same defendant over the same subject matter that is the partnership. I do not see why the applicant should be denied

leave to amend the pleadings. I do not think this application will cause prejudice to the defendant or cause delay in the determination of the matter. To the contrary all the matters in controversy will be determined. Accordingly I allow the application and grant leave to the plaintiff to file an amended plaint within seven (7) days. The defendant is also granted leave to file an amended defence within seven (7) days of service.

The defendant will have the costs of this application.

RULING READ AND SIGNED ON 29TH JANUARY 2010 AT NAIROBI

M.K. KOOME
JUDGE