



**COLLECTION HOUSE LTD.....PLAINTIFF**  
**VERSUS**  
**SHAUKHAT FAROOQ.....DEFENDANT**

**RULING**

The defendant filed an application pursuant to the provisions of **Order VI Rule 13(1)(a)** of the **Civil Procedure Rules** seeking the striking out of the plaintiff's amended plaint filed on 12<sup>th</sup> May 2009. The defendant contends that the amended plaint did not raise any reasonable cause of action and neither is it supported by a verifying affidavit. The defendant argues that the amended plaint had been filed without the leave of the court, further constitutes a departure from the suit as was pleaded in the plaint dated 8<sup>th</sup> May 2008. The application is opposed. The plaintiff filed grounds in opposition to the application. It stated that the application was misconceived, mischievous, unmeritorious, frivolous, vexatious, brought in bad faith and an abuse of the court process. The plaintiff argues that the application is incompetent, fatally defective and improperly before the court. The plaintiff urged the court to dismiss the application with costs.

At the hearing of the application, I heard rival submissions made by Mr. Mogere for the defendant and Mr. Karungo for the plaintiff. Mr Mogere reiterated the grounds in support of the application and stated that the amended plaint had been filed without leave of the court. He submitted that the original plaintiff in the suit was Collection House Ltd which claimed to have been assigned the cause of action by a Mohammed Bashir. The affidavit verifying the plaint was sworn by one Nyambura Muchai, a director of the plaintiff. It was Mr. Mogere's contention that since Mr. Bashir had assigned the cause of action to the plaintiff, he had no cause of action in the suit; the said Bashir could not therefore purport to re-enter the suit by filing an amended plaint substituting himself with the plaintiff. He argued that if Bashir was desirous of being enjoined in the suit, he should have sworn an affidavit in verification of the amended plaint. He was of the view that the amendments effected in the amended plaint constituted a complete departure from the original pleadings that it cannot be allowed by the court. He urged the court to strike out the said amended plaint with costs to the defendant. Mr. Karungo for the plaintiff submitted that **Order VI Rule 6(1) & (2)** of the **Civil Procedure Rules** does not prejudice the right of a party to amend his pleadings. He explained that an amended plaint does not require to be verified by an affidavit. He was of the view that if the court were to find that

a verifying affidavit was needed, then it should grant the plaintiff leave to file such verifying affidavit. He submitted that Mr. Bashir had taken over the conduct of the case and had therefore revoked the assignment of his cause of action to the original plaintiff. He was of the view that the grounds put forward in support of the application did not merit consideration by the court. He urged the court to dismiss the application with costs.

I have carefully considered the rival arguments made by counsel of the parties to this application. I have also read the pleadings filed by each party in support of their respective opposing positions. The original plaintiff in the suit was Collection House Ltd. In paragraph 3 of the plaint, it was pleaded that Mr. Bashir had assigned it, by way of a deed of assignment, his claim, right and title to recover a debt owed to him by the defendant. Mr. Bashir explained the reason for his assignment of his cause of action to be on account of his ill health. The plaintiff obtained *ex parte* judgment against the defendant and sought to execute against the defendant. On 15<sup>th</sup> December 2008, the defendant moved the court to have the *ex parte* judgment together with all consequential orders flowing therefrom set aside. Despite objection by the plaintiff, this court upon considering the arguments put forward by the parties, allowed the application and set aside the *ex parte* judgment together with all the consequential orders. The orders setting aside the judgment was conditional; there was a prohibitory order which had earlier been issued by the court in respect of a parcel of land known as L.R. No.209/1210/17 Nairobi, registered in the name of the defendant. The court directed that the prohibitory order remains in place pending the hearing and determination of the suit. The defendant was granted fifteen (15) days upon which to file and serve his defence. The ruling was delivered on 22<sup>nd</sup> April 2009. The defendant filed his defence on 5<sup>th</sup> May 2009. On 13<sup>th</sup> May 2009, the plaintiff filed the amended plaint that is the subject of this application. It was evident that the said amended plaint was filed without the leave of this court.

In the said amended plaint, Mohammed Bashir purports to substitute Collection House Ltd as the plaintiff in the suit. The paragraph of the plaint that stated that Bashir had assigned his claim, right and title to recover the debt owed to him by the defendant was deleted. It is apparent that by excluding the said paragraph in the purported amended plaint, Mohammed Bashir had changed the entire substratum of the suit. If he were to take over the suit, he was required to swear an affidavit in verification of the contents of the amended plaint. He cannot purport to rely on the verifying affidavit which was sworn by a

director of a company which he had assigned his right to sue the defendant for the recovery of the alleged debt.

In the premises therefore, I hold that the defendant's application has merit. It is hereby allowed. The amended plaint dated 13<sup>th</sup> May 2009 which was filed without leave of the court is hereby struck out with costs to the defendant. If Mohammed Bashir desires to substitute the plaintiff in this suit, an appropriate application should be filed for amendment of the plaint under the relevant provisions of the **Civil Procedure Rules**.

It is so ordered.

**DATED AT NAIROBI THIS 15<sup>TH</sup> DAY OF MARCH 2010**

**L. KIMARU**  
**JUDGE**