



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MALINDI
Civil Suit 3 of 2007

KASIMU SHARIFU MOHAMED.....PLAINTIFF
VERSUS
TIMBI LIMITED.....DEFENDANT

RULING

When this matter came up for hearing, Mr. Mokaya sought to address the court on the basis that he was acting for an interested party. Mr. Ghalia objected and the court upheld the objection. Mr. Otara for the respondent then informed this court that the directions by the court in essence took care of prayer No. 4 of the Chamber Summons dated 21st April 2010.

Mr. Ghalia then submitted that the application was bad and ought not to proceed in its form because it included a party who was not properly before the court (namely the intended interested party) It was his contention that for the application to proceed in its present form would be misleading and mischievous and he proposed that applicants do file a fresh application and that the present application ought to be dismissed with costs.

In response, Mr. Otara prayed that the interested party as appearing in the Title of the application be deleted – so as to fit in with the present. He invited this court to consider the provisions of section 1A and 1B of the Civil Procedure Act and allow the amendment so as to pave way for the pending application and avoid delay.

Mr. Ghalia objected saying the application ought to be struck out and that in any event it was the applicant who had caused delay.

Basically this is an oral application seeking to amend so as to delete the names of the intended third party, as a consequence of the direction given by this court regarding Mr. Mokaya's appearance. I am persuaded that when Mr. Otara prepared the application, he had in mind the intention of the said third party to be enjoined in the suit – of course this is even borne out by the content of prayer No. 4 of the application.

So that on the onset, inclusion of the intended 3rd interested party in the title of the application was not propelled by any mischief. However the intended interested party is not a party to this suit and that is a fact - why cause longer delays through technical process of striking out, then filing a similar application, just so as to have the name Cyprea Ltd – Interested party removed, when that can so easily be done by the stroke of a pen in the form of deleting the same following an oral request? What prejudice will the defendant suffer by such an amendment? None. In allowing the oral application for amendment, I am guided by section 100 of the Civil Procedure Act.

I allow the amendment by deleting the named intended interested party from the heading of the Chamber Summons dated 21st April 2010.

Delivered and dated this 25th day of **May 2010** at Malindi.

H. A. Omondi
LADY JUSTICE

Mr. Angima holding brief for Mr. Maosa
Mr. Lughanje holding brief for Mr. Otara