



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NAIROBI

COMMERCIAL & TAX DIVISION – MILIMANI

CIVIL CASE NO. 566 OF 2009

N.V. ORGANONPLAINTIFF

VERSUS

C. MEHTA & COMPANY LIMITEDDEFENDANT

R U L I N G

The application before the Court is brought by way of a Chamber Summons dated 22nd April, 2010, and taken out under **Order VI A Rules 3 and 8** of the **Civil Procedure Rules; Section 3A** of the **Civil Procedure Act**; and all other enabling provisions of the law. The Plaintiff/Applicant thereby seeks orders that this honourable Court be pleased to grant leave to the Plaintiff/Applicant to amend its plaint in accordance with the annexed amended draft; that the amended plaint be deemed as duly filed and served; and that the costs of this application be provided for.

The application is supported by the annexed affidavit of Mwaniki Gachoka, Advocate, and is based on the grounds that an error was made when stating the debt owed to the Plaintiff as €153,253 instead of €152,694.10; that it is in the interest of justice that the Plaintiff/Applicant be granted leave to correct the error on the face of the plaint; and that no prejudice will be occasioned to the Defendant if the amendment is allowed.

The Court record shows that after the application was filed on 26th April, 2010, it was duly served on the Respondent's Advocates on 27th April, 2010. The latter did not file either a replying affidavit or grounds of opposition. And though the Respondents were served in sufficient time to attend Court for the hearing of the application, they did not do so. In such circumstances, it can only be inferred that they did not intend to challenge the application and the same is therefore unopposed.

The application accordingly succeeds, consequent whereupon I make the following orders –

- (a) The Plaintiff/Applicant be and is hereby granted leave to amend its plaint in accordance with the draft amended plaint annexed to the application.***
- (b) The amended plaint be deemed as duly filed upon the payment of the appropriate filing fees.***
- (c) The amended plaint be served upon the Defendant within 7 days of filing.***
- (d) The Defendants be at liberty to file and serve an amended defence within 14 days of service.***

(e) The costs of the amendment, if any, be borne by the Plaintiff in any event.

Dated and delivered at Nairobi this 29th day of July, 2010.

L. NJAGI
JUDGE