



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT MERU**

**Civil Case 91 of 2007**  
**HARON KOOME KANYAMU ..... PLAINTIFF**

**VERSUS**

**PAN AFRICA LIFE ASSURANCE LTD. .... DEFENDANT**

**HIGH COURT CIVL CASE NO. 93 OF 2007**

**MOSES MWIRIGI ANAMPIU ..... PLAINTIFF**

**VERSUS**

**PAN AFRICA LIFE ASSURANCE LTD. .... DEFENDANT**

**HIGH COURT CIVIL CASE NO. 94 OF 2007**

**JOSPINE BUNDU NJIRU ..... PLAINTIFF**

**VERSUS**

**PAN AFRICA ASSURANCE LIMITED ..... DEFENDANT**

**RULING**

In all the above suits, the plaintiffs pleaded that they were employed by the defendant as agents of the defendant and that by a letter dated 6<sup>th</sup> July 2007, the defendant wrongly and unlawfully terminated their agency. The plaintiff in their respective suits prayed for the very same prayers, indeed, if I may be allowed to say so, it was a case of “*Copy and Paste*” as far as all the three plaintiffs are concerned. The defendants in all the three suits filed a similar application. It is the Chamber Summons dated 3<sup>rd</sup> November 2009. The application is brought under Order VI A Rules 3 and 5 of the Civil Procedure Rules and Section 3A of the Civil Procedure Act. The defendant seeks leave to

amend its defence and also seeks an order of consolidation of the three suits. The application for amendment is based on the ground that there was in advertent omission to include the particulars of the alleged fraud/ forgery in the defence. The proposed amended defence and counterclaim is annexed to the application. The application was opposed by all the plaintiffs terming the same as “*fishing expedition*” and that it was made in bad faith to delay the plaintiff’s action. Looking at the record of the proceedings in these files, the opposition raised by the plaintiffs is not supported. The principles to guide the court when considering an amendment of pleadings were considered in the case **Macharia Vs. Guardian Bank Ltd & Another** [2003] KLR where the Court stated:-

“Amendments sought before trial should be freely granted if such amendments 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.”  
“There can be no injustice if the prejudice to the adverse party can be compensated by an order for costs.

The plaintiffs did not show what if any prejudice they will suffer if the defendant is granted leave to amend its defence. In respect of the prayer for consolidation, the defendants stated that all the claims relate to the same incident. As stated before, all the claims are a replica of each other. The plaintiffs were all agents of the defendant who, as it can be seen from the title, is an insurance firm. Their agency was terminated at the same time. The defendant stated that in this case they shall call the same witnesses and shall use the same exhibits in respect of the three suits. The allegation as seen in the defendant’s proposed amended defence is that all the plaintiffs were involved in fraud and forgery in carrying out their duties for the defendant’s company. It is for that reason that the defendant alleged they terminated the plaintiff’s agency. The defendant also claims against all the plaintiffs for general damages suffered as a result of the plaintiff’s alleged actions. Order XI of the Civil Procedure Rules is the Rule which is concerned with the consolidation of suits. Rule 1 provides as follows:-

**“1. Where two or more suits are pending the same court in which the same or similar questions of law or fact are involve court may either, upon the application of the parties, or of its owndiscretion, and upon such terms as mayseem fit –**

**(a) order a consolidation of such suits, and**

**(b) direct that further proceedings in any of such suits be stayed until further order.**

I have examined the pleadings in this causes and I do find that a similar question of law or facts will indeed be involved when these suits are finally set down for hearing. For that reason, I will accede to the prayer for consolidation of the suits. I grant the following orders:-

- 1. The defendant is hereby granted leave to file and serve the proposed amended defence and counterclaim as per the draft annexed to the Chamber Summons dated 3<sup>rd</sup> November 2009.**
- 2. I order that HCC No. 91 of 2007, 93 of 2007 and 94 of 2007 be hereby consolidated. To that end, the 1<sup>st</sup> plaintiff shall be HARON KOOME KANYAMU, the 2<sup>nd</sup> plaintiff shall be MOSES MWIRIGI ANAMPIU and the 3<sup>rd</sup> plaintiff shall be JOSPHINE BUNDU NJIRU.**
- 3. The plaintiffs are awarded the costs of the Chamber Summons dated 3<sup>rd</sup> November 2009.**

Dated and delivered at Meru this 26<sup>th</sup> day of July 2010.

**MARY KASANGO**  
**JUDGE**