

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI COMMERCIAL COURTS)
Civil Case 706 of 2008

TWIGA MOTORS LIMITED PLAINTIFF

VERSUS

HON. DALMAS OTIENO ONYANGO..... DEFENDANT

RULING

- 1.** A ruling by **Khaminwa J** delivered on 21st October 2009 allowed judgment for the admitted sum of **Ksh.12,705,095/-** in favour of the plaintiff. In that application the plaintiff sought for judgment in terms of paragraph 3 of the Plaint and they also sought for interest at 17% compounded monthly from the date of filing. On 12th January 2010 the applicant filed a chamber summons under **Order VI A rule 3,4 and 8 of the Civil Procedure** Rules seeking for orders that the plaint be amended in terms of the draft amended defence. The amendment basically takes away the other claim except for the sum of **Ksh.12,705,095/-** with interest at court rates until full payment. This application is based on the grounds that it is necessary to amend the plaint in order to precisely plead the real questions in controversy between the parties. The plaintiff also wishes to abandon the claim of interest at the rate of 17%.
- 2.** This application was opposed by the respondent. Counsel relied on the grounds of objection on points of law. It was submitted that the matter should proceed for hearing to determine the costs. There are also some payment which were made by the defendants and they have not been reflected. The plaintiff having sought for summary judgment should proceed but not make an application seeking for another judgment by way of amendments. The application was also faulted because it was brought by way of chamber summons instead of a notice of motion.
- 3.** As I understand it this application seeks to amend the defence. Application for amendment are freely allowed under the provisions of **Order VIA** so as to bring all the issues in controversy for determination. An application for amendment can be brought at any time and the issue to determine is whether the amendment will cause any hardship or prejudice to the opposite side. I see no prejudice that will be caused to the opposite side by allowing an amendment which takes away the other claims and seeks for interest rate at court rates instead of 17%. Moreover, I have nothing to do with the ruling where summary judgment was entered for the plaintiff. The application before me is merely for amendment of the pleadings. Accordingly, I allow the application. The applicant is allowed to amend the pleadings in terms of the draft amended plaint and to file it and serve within 14 days. Similarly the defendant will have 14 days after service within which to file the amended defence. Costs of this application to the defendant.

RULING READ AND SIGNED ON 23RD July 2010 AT NAIROBI.

M.K. KOOME
JUDGE