



IN THE HIGH COURT OF KENYA

AT NAKURU

CIVIL SUIT NO. 2 OF 2003

PETER NJUGUNA MURIMA.....PLAINTIFF/APPLICANT

VERSUS

POSTAL CORPORATION OF KENYA.....DEFENDANT/RESPONDENT

RULING

The plaintiff seeks through his Chamber Summons dated 8th April 2010, leave of this court to amend his plaint. He avers in the affidavit in support of the application that at the time of filing this suit, there was a criminal case pending against him which had not but has now been finalized and he has been acquitted. He therefore wishes to amend his plaint and include a claim for damages for malicious prosecution.

The defendant opposes the application terming it fatally incompetent and hopelessly misconceived. Its Acting Corporation Secretary avers in his replying affidavit that the Attorney General who prosecuted the plaintiff in the criminal case not being a party to this suit, a claim for malicious prosecution against the defendant alone prosecution is unsustainable. Moreover, he further avers, the plaintiff was not acquitted. The criminal case against him was withdrawn and that is not an acquittal.

I have considered the matter. Lest I prejudice the hearing of this case, I do not wish to express any view on the defendant's contention that a claim for malicious prosecution is unsustainable if the attorney General is not a party to this suit or that the withdrawal of the criminal case against the plaintiff does not amount to an acquittal.

The law is quite clear on amendments. In **Eastern Bakery Vs Castelino [1958] EA at p.462**, Sir Kenneth O'Connor, P., set out in brief the principles which should guide the court when dealing with applications for amendments thus:-

“Amendments to pleadings sought before the hearing should be freely allowed if they can be made without injustice to the other side, and there is no injustice if the other side can be compensated by costs.”

No prejudice shall be caused to the defendant in this case which cannot be compensated by an award of costs if the amendment is

allowed. I therefore allow this application with costs to the defendant in any event.

DATED this 26th day of November, 2010.

D. K .MARAGA

JUDGE