



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
MISC. CIVIL CASE NO. 368 OF 2010

KEPHA MWEBIAPPLICANT
VERSUS
HON. MR. JUSTICE PHILIP WAKI.....1ST RESPONDENT
HON. ATTORNEY GENERAL2ND RESPONDENT
COMMISSIONER OF POLICE3RD RESPONDENT

R U L I N G

At the hearing of the Applicant’s application dated 28th September 2010, Mr. Ndegwa Counsel for the Applicant made an oral application for leave to amend the Notice of Motion in paragraph 2 by inserting the words “and in any event” after the word “abuse”. The application was opposed by Mr. Muteti for the Respondents.

I have considered the meaning and effect of the proposed amendment. I do find that if allowed it would change the parameters of the orders sought and the course of proceedings. It envisages the prosecution of suspects of the alleged crimes, even in the event the court declines to compel Hon. Justice Waki to disclose the names of the persons contained in the sealed envelope submitted to Hon. Kofi Annan in his capacity as Chairman of the Commission of Inquiry in the Post Election Violence following the December 2007 Elections.

It is a substantive and substantial amendment. The Respondents in the grounds of opposition had prepared their Defence based on the prayers in the Notice of Motion as it is. To allow the amendment of this magnitude through an oral application would not be fair and would be unjust in the circumstances.

I think that the Applicant ought to make a formal application to enable the Respondents respond to it effectively and to bring out the exact reasons for the intended amendment and its consequences to the pleadings and the entire proceedings if allowed.

The Respondent shall have costs of the oral application herein.

Dated and delivered at Mombasa this 6th day of December 2010.

M. K. IBRAHIM
J U D G E

ORDER BY CONSENT

Application shall be stood over generally. Liberty to apply.

6.12.201

Coram: Ibrahim, J
Court clerk – Kazungu
Mr. Ndegwa for the Applicant
Mr. Ondari for Mr. Muteti for the Respondent

Ruling delivered in their presence.

IBRAHIM, J