

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT EMBU

Civil Case 69 of 2002

NJIRU BUILDING CONTRACTORS.....APPLICANT

VERSUS

CO-OPERATIVE BANK OF KENYA.....RESPONDENT

RULING

The application dated 10/9/2008 by counsel for the plaintiff is seeking leave to amend the plaint in terms of the draft amended plaint. Among the amendments sought is the enjoining of the 2nd plaintiff. According to the applicant, the amendments are necessary for the just and fair determination of the suit and further, that the defendant will not suffer any prejudice as it will have an opportunity to file an amended defence if need be. In his affidavit in support of the application dated 10/9/2008, the intended 2nd plaintiff states that the court had on 9/11/2004 ordered that he be co-joined as a plaintiff but that was not done. He avers that as a guarantor of the disputed loan, he should be brought on board. He contends that the prayers as drafted in the original plaint are not sufficient to deal with the matters raised.

The application is nonetheless opposed vide the replying affidavit of Winfred Mwangi. She has averred that the applicant herein has been granted leave to amend the plaint by the court twice before but he has failed to do so. She says that the amendments do not raise anything new and sees the application as a ploy to further delay the matter. I have considered all these averments. I have perused the intended amended plaint and compared it with the original plaint. No convincing reasons have been given as to why the said amendments were not done earlier. The reason that the plaintiff has changed advocates is not sufficient. I nonetheless note that the draft amended plaint does actually bring out the issues raised more clearly and it will be much easier for the same to be ventilated and even defended by the defendants. The defendant do not stand to suffer any prejudice if the said amendments are allowed. The defendant can be compensated by way of costs. Leave to amend pleadings is at the discretion of the court. Where the court is satisfied that the amendments in question are made in good faith and where the same are meant to clear rather than obscure or cloud issues, then the same should be allowed. In this case, I admit that the amendments should have been done much earlier and there is no reason advanced as to why counsel previously on record failed to effect the said amendments. My finding however is that the defendant will not be prejudiced by the said amendments. It has the opportunity to respond to the amended plaint and any inconvenience can be usaged by way of an award for costs. In the circumstances, I allow this application and order that the draft amended plaint be deemed as duly filed on payment of the requisite court fees. The same be served on the defendants within 7 days of the date hereof. The defendant is given leave to file amended defence within 15 days of such service.

The plaintiff/applicant to pay the defendant costs of defending the application.

W. KARANJA

JUDGE

Delivered, signed and dated at Embu this 29th day of June 2009.

In presence of:- Mr. Okwaro for Applicant.

N/A for Respondent.