



**REPUBLIC OF KENYA**

**N THE HIGH COURT OF KENYA**

**AT NAIROBI (NAIROBI LAW COURTS)**

**Civil Suit 1285 of 2005**

**STEPHEN WACHIRA MARAKARU ..... PLAINTIFF**

**VERSUS**

**TANA AND ATHI RIVER DEVELOPMENT  
AUTHORITY .....DEFENDANT**

**RULING**

1. Before me is an application brought by the Defendant by way of a Chamber Summons dated 3<sup>rd</sup> November, 2008 under the provisions of section 3A of the Civil Procedure Act, & Order XLIX Rule 5 of the Civil Procedure Act. It is supported by the affidavit of *Munyalo R. Nthuli Advocate*.
2. The application is seeking to enlarge time and/or extend the validity of the time for leave granted to the Defendant to file its defence and counter claim and to deem the annexed copies as duly filed.
3. The Defendant submits that the delay on their part was occasioned due to the time it took to get relevant documents in support of the claim and that the defendant stands to loose substantially if the amendments are not allowed.
4. The Plaintiff opposes the application and has filed a Replying Affidavit dated 24<sup>th</sup> November, 2008. The Plaintiff contends that the consent order entered by the parties on the 29<sup>th</sup> of October, 2007 only gave leave to the defendant to amend the defence and not the counter claim and that the delay herein is prejudicial to the Plaintiff.
5. The amendments agreed upon indeed referred to the Plaintiff amending the plaint and the defendant his defence. However I am of the view that the court must herein read the intend of the parties. The defendant filed a statement of defence and counter claim on the 18<sup>th</sup> of November, 2005 in response to the Plaint. With the amended plaint having been filed naturally the Plaintiff should expect the defence to amend its pleadings accordingly, be it the defence or both the defence & the counter claim as the Defendant's pleadings include both the defence and counter claim. The intend of the parties to my mind was to allow each one of them to amend their pleadings to the best of their interest, I therefore decline to accept the argument by the Plaintiff's counsel that an amendment to the counterclaim is being sort through the back door as the parties agreed by consent to amend only the plaint and the defence.
6. In regard to the enlargement of time, I do agree with the Plaintiff's counsel that the defence has dragged its feet in not only amending the pleadings, but also in filing the current application & indeed in prosecuting the same. However the law is very liberal in allowing amendment of pleadings. Order VIA rule (3) allows amendment of pleadings at any stage of the proceedings and as such the Plaintiff cannot complain that amending at this stage will prejudicial his case.
7. The consideration for the court is whether the delay is unreasonable in the circumstances of the case. The courts have held that the purpose of amending pleadings is to allow parties to plead the whole of their claim. And that the same is necessary to allow the court to determine the real issues before it. I refer to the holding Central Kenya Ltd vs. Trust Bank Ltd & Another (1998) L.L.R 814 CAK.

8. I am satisfied that the defendant has given reasonable explanation for the delay in filing the amendments to the defence and the counterclaim. I am also satisfied that the amendments are necessary for placing before the court the real issues for determination. I see no prejudice likely to be suffered by the Plaintiff if the amendments to the defence & counterclaim claim are allowed.

I accordingly therefore grant the following orders-

1. That time for filing the defence and counterclaim be and is hereby enlarged.
2. That the defendant do file and serve the amended defence and counter claim within the next Fourteen (14) days of the date hereof.
3. That the Defendant do pay costs of Kshs.7,500/= to the Plaintiff.

Dated and delivered at Nairobi this 20<sup>th</sup> July, 2009.

**ALI- ARONI**

**JUDGE**