



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI COMMERCIAL COURTS)
Civil Case 169 of 2005**

ABDUL RAZAK KHALFAN (*Suing on behalf*

Of The International Air Transport Association "I.A.T.A").....1ST PLAINTIFF

ASSURANCE COMPANY LIMITED 2ND PLAINTIFF

VERSUS

RESIDENTS TRAVEL DEN LTD. 1ST DEFENDANT

JIMMY RAYANI 2ND DEFENDANT

MRS. PARVEZ JIMMY RAYANI 3RD DEFENDANT

MRS. SALIMAH AMEEN PIRBHAI 4TH DEFENDANT

R U L I N G

The application dated 15/12/2008 was filed on behalf of 1st and 2nd plaintiffs under the provisions of **Order XLIX Rule 5 and Order VIII Rule 17 (1) and (2) Civil Procedure Code, Order VIA Rules 3, 5 and 8 Civil Procedure Code and Section 3A and 95 of Civil Procedure Act, Cap.21**. Orders sought are:-

(a) Leave to amend their reply to second, third and fourth defendants' amended defence;

(b) That time be enlarged within which the plaintiffs may file and serve their amended reply to defences mentioned under (a) above and that the annexed amended defence be deemed to be amended upon payment of the filing fees.

The grounds on which application is brought are stated. That all

parties agreed to amend pleadings and defences of the defendants. However, the parties overlooked to include the right of plaintiffs to file an amended reply to the amended defences. The defendants have filed grounds of opposition which I have perused.

The provision is made under **Order VIA** for amendment of pleadings. **Order 1 (3)** where an amended defence is served on a plaintiff if the plaintiff has already filed a reply on that defendant he may amend his reply and the period for service of his reply or amended reply is 14 days after the service on him of the amended defence. This application is therefore allowed under that **Order**.

It is clear the time of service prescribed has long expired. However, there is provision to extend time

under **Order 49 Rule 5** where the court is empowered to enlarge time although the application for enlargement is not made until after the expiration of the time allowed.

Upon consideration of the circumstances, it is clear the defendants were aware when consenting to amendment of defence that the plaintiff would have a right to amend reply. Furthermore, it is established principle that court will permit amendments at any time before judgment is pronounced. The applicant relies on the authority of **Civil Appeal No. Nai 294 of 2005 – Githiaka vs. Ndiriri** decision of which I agree. In the case of **Mohi & Machama vs. Kenya Railways & another**, Hon. Justice Onyango Otieno (as he then was) said:-

“It is a well settled principle in law that applications for amendments to pleadings before hearing are normally to be granted without much ado if they can be made without injustice to the opposing party ...”

The respondents here say they will suffer injustice if orders are granted. I have considered the respondents’ submissions and I do not think there is prejudice that can be suffered by the respondents if the said orders are granted.

I therefore allow the application and order the plaintiff to file amended reply attached within the next 7 days by paying court fees and serving the same within 7 days thereof.

The applicant shall pay costs of this application to the defendant/respondent.

Orders accordingly.

DATED, SIGNED and DELIVERED at Nairobi this 19th day of October 2009.

JOYCE N. KHAMINWA

JUDGE