

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA

Civil Case 528 of 1998

LAWI DUDA & 21 OTHERS..... PLAINTIFFS

VERSUS

BAMBURI CEMENT LIMITED..... DEFENDANT

RULING

The Plaintiffs' Chamber Summons dated 30th November 2005 brought under Order 6A Rules 3, 7 and 8 of the Civil Procedure Rules as well as under Section 3A of the Civil Procedure Act seeks leave of this court to further amend the plaint. It is opposed on the grounds that it has been brought after inordinate delay and that the claims being introduced by the proposed amendment are time barred under the Limitation of Actions Act.

Having perused the proposed amendment I do not agree with counsel for the defendant that the amendment seeks to introduce claims that are statute barred. Besides describing the plaintiffs individually the proposed amendments simply particularizes the plaintiffs' claims. That is not the same as introducing new claims.

The suit has not been heard and I do not see any prejudice that will be caused to the defendant that cannot be compensated by an award of costs – **Eastern Bakery –Vs - Castelino [1958] EA 461.**

I therefore allow the application and order that the plaintiffs shall file and serve their further amended plaint within twenty one days of the date hereof. The defendant has corresponding leave to amend its defence within 15 days of service of the further amended plaint. Costs to the defendant in any event.

DATED and delivered this 11th day of January 2008.

D.K. MARAGA

JUDGE