

REPUBLIC OF KENYA
IN THE HIGH COURT
AT NAIROBI
MILIMANI LAW COURTS

Civil Case 211 of 2007

ISAAC KAGIRI NJAGI.....PLAINTIFF

VERSUS

MITHAMO MUCCHIRI.....DEFENDANT

R U L I N G

Before me is an application by way of a Chamber Summons dated 18th July 2007 and expressed to be brought under Order VIA of the Civil Procedure Rules in which the Defendant seeks leave to amend his defence. The application is based on the ground that the amendment is necessary to enable the Defendant bring out issues in controversy succinctly for adjudication by the court. The application is also supported by an affidavit sworn by the Defendant in which he avers that he has been advised by his advocates on record whose advise he verily believes to be true that the defence as filed does not adequately capture the issues to be canvassed and require amendment as per annexed amended defence. The Defendant further avers that it is in the interest of justice that the same be amended so that the issues in controversy are succinctly set out to enable the court effectively adjudicate the matter.

The Plaintiff was served with this application but did not file any papers in opposition to the same.

It is trite law that amendments sought before the hearing should be freely allowed if they can be made without injustice to the other side and there is no injustice if the other side can be compensated by costs.

In the case of **DANIEL MIGWI NJAI VS. HIGH VIEW FARM LTD CA NO. 139 OF 1989** (unreported) the Court of Appeal said:-

”There is no question that the court has power under O. VIA of the Civil Procedure Rules to allow an amendment at any stage of the proceedings on such terms as to costs or otherwise as may be just for the purpose of determining the real question in controversy between the parties. There is no doubt that an amendment can always be allowed if the interest of justice so requires.”

Having looked at the draft amended defence annexed to this application I am satisfied that the amendment sought is necessary so that the issues in controversy are succinctly set out to enable the court effectively adjudicate the matter.

Accordingly the application is allowed in terms of prayers 1, 2 and 3 of the Chamber Summons dated 18th July 2007.

Dated and Nairobi this 29th day of February 2008.

J. L. A. OSIEMO

JUDGE