



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA

Admiralty Claim 11 of 2007

ONE EARTH ZANZIBAR LIMITED CLAIMANT

- Versus -

OWNERS OF M.V. "KASKAZI" DEFENDANT

Coram: Before Hon. Justice L. Njagi

Miss. Bisem for Applicant

Mrs. Makone for Respondent

Court clerk - Ibrahim

R U L I N G

While Mr. Tindika for the respondent was still responding to the submissions of Mr. Kinyua for the applicant, the latter sought the court's permission to amend the grounds contained in the application notice dated 7th January, 2008 by adding one more ground, to wit –

“That the claim form is invalid as it is not verified by a statement of truth, it does not contain the particulars of the claim, and it is not accompanied by the response pack.”

Mr. Kinyua explained that this ground was omitted by error when the application was being drawn. He submitted that the court had jurisdiction and power to allow the amendment of the application notice orally, and that no prejudice will be occasioned to the respondents since the applicants are not affecting or changing the prayers in the application.

Opposing the application, Mr. Tindika submitted that this matter can only proceed under the rules of Civil Procedure of England pursuant to section 4 of the Judicature Act, Cap 8 of the Laws of Kenya. He further submitted that counsel for the applicant had not cited the provision of procedure which allows the amendment of an Application Notice, and also allows applications for such amendments to be made orally. Referring to Part 23 of the English Civil Procedure Rules, Mr. Tindika argued that no provision had been made for an application such as the present one and therefore parties should proceed according to the documents before the court. He then submitted that the application had no basis in law and should be dismissed.

Mr. Tindika also referred to Part 10 paragraphs 5.4 and 5.5 of the English Civil Procedure Rules and

submitted that an application for amendment should be formal, i.e. written, and must be accompanied by evidence. He finally submitted that if the application is allowed, it would prejudice the respondents who had prepared their case on the basis of the grounds already before the court, otherwise they would now have to do fresh research to counter the newly introduced ground. He therefore urged the court to disallow the application as it was unprocedural and belated.

In a brief reply, Mr. Kinyua submitted that the court had jurisdiction under section 4(3) of the Judicature Act, and that the application did not fall within the ambit of Part 10 paragraphs 5.4 or 5.5 of the English Civil Procedure Rules.

I have considered the rival submissions of counsel. The main issues to be determined are whether this court has jurisdiction to entertain this application and, if so, whether the amendment sought should be granted. Section 4 of the Judicature Act, Cap 8 of the Laws of Kenya, declares the High Court as a court of admiralty, and stipulates the procedure which the court should apply in Admiralty matters. So far as is applicable, the relevant provisions of that section read as follows –

“4.(1) The High Court shall be a court of admiralty ...

(2)The admiralty jurisdiction of the High Court shall be exercisable –

(a) ...

(b) in the same manner and to the same extent, and

(c) in accordance with the same procedure,

as in the High Court in England ...”

In the course of the hearing of this matter, it turned out that there was no specific provision in the Civil Procedure Rules of England under which the application for amendment could be made. For that reason, learned counsel for the Respondent submitted that the parties could only proceed on the basis of the documents before the court. In effect, this was tantamount to suggesting that the court had no jurisdiction to entertain the application for amendment.

I note, however, that section 4(3) of the Judicature Act introduces a new angle to the matter. It states

–
“(3) In the exercise of its admiralty jurisdiction, the High Court may exercise all the powers which it possesses for the purpose of its other civil jurisdiction.”

For the purpose of its civil jurisdiction, the High Court derives its powers from the Civil Procedure Act and the rules made thereunder. Whenever there is no specific rule under which the court can move, its hands are not tied. It can always fall back on its inherent jurisdiction, whose philosophy is now embodied in section 3A of the Civil Procedure Act. That section is in the following words –

“Nothing in this section shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.”

By virtue of Section 4(3) of the Judicature Act and, by extension, Section 3A of the Civil Procedure Act, I find that this court has inherent power to entertain the oral application for amendment.

The overriding objective of the Civil Procedure Rules is that the courts should deal with cases justly. That includes, so far as is practicable, ensuring that each case is dealt with not only expeditiously, but also fairly. Amendments to pleadings, in general, ought to be allowed so that the real dispute between the parties can be adjudicated upon.

In the instant matter, counsel for the applicant told the court that the proposed amendment was meant to incorporate a ground which was erroneously left out during the preparation of the application notice. Indeed, the proposed amendment only goes to give force and effect to the prayer for order 2 as an additional ground for which the application should be struck out. I think it is a reasonable application to make, even orally, as the omission, once rectified, will help to bring all the questions in controversy between the parties into sharp focus. Since counsel for the respondent is still on his feet, he has a chance to respond to the amendment. If he is not able to do so, he can always be accorded more time.

The proposed amendment is accordingly allowed.

Dated and delivered at Mombasa this 1st day of February, 2008.

L. NJAGI

JUDGE