



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
OF KISII**

Civil Case 44 of 2007

JOEL OTOIGO NYASINGA PLAINTIFF

VERSUS

1. KENYA TEA DEV. AGENCY

2. KIAMOKAMA TEA FACTORY

3. CHRYSANTUS M. MACHOKA

4. PRESIDING OFFICER KIAMOKAMA TEA FACTORY.

..... DEFENDANTS

RULING

The plaintiff filed an application brought under **order VIA rules 5(1)** of the **Civil Procedure Rules** and **Sections 3A** and **63(e)** of the **Civil Procedure Act** seeking leave to amend his plaint. A draft of the amended plaint that was annexed to the plaintiff's affidavit reveals that the plaintiff wishes to sue the fourth defendant in his own name rather than in his official position at the second defendant.

Mr. Minda who held brief for Mr. Nyachiro for the defendants opposed the said application. In his view, the application was brought under the wrong provisions of the law.

I have considered the application. It is trite law that amendments to pleadings sought before a hearing ought to be freely allowed unless they will cause injustice to the other side, see **EASTERN BAKERY VS CASTIELINO** [1958] E.A 461. I believe no injustice will be occasioned to the defendants if the amendment sought is allowed. Moreover, it will be necessary so that the issues in controversy between the parties can be determined conclusively. I therefore grant leave to the plaintiff to file and serve an amended plaint within 15 days from the date hereof. The plaintiff will bear the costs of the application.

DATED, SIGNED and DELIVERED at KISII this 7th day of April, 2008

D. MUSINGA

JUDGE

Delivered in open court in the presence of:

Mr. Maroro HB for Omariba for plaintiff

N/A for defendant

D. MUSINGA

JUDGE