

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MERU

Civil Case 56 of 2002

MWENENDEGA ENTERPRISES LTD..... PLAINTIFF

VERSUS

KENYA COMMERCIAL BANK LTD DEFENDANT

RULING

The application to which this ruling relates was filed on 6th November 2006. It came for hearing before me on 15th November 2007, when it transpired that the respondent was duly served with the application and the hearing date but failed to attend.

Hearing proceeded *ex parte*. The application seeks to amend the statement of defence by including a counter-claim. As it is the application is unopposed but nonetheless the applicant was duty-bound to satisfy conditions for amendment of pleadings. The application is brought pursuant to Order 6A Rule 3 of the Civil Procedure Rules.

The substantive law, however, is section 100 of the Civil Procedure Act. Both the Act and the procedures cloth the court with a wide discretion to allow for amendment of the pleadings at any stage subject only to ensuring that any amendment to be made is for the purpose of determining the real question or issue raised by or depending on the proceeding. Amendment must also be made in good faith and timeously. See **Joseph Ochieng and 2 others V. First National Bank of Chicago** Civil Appeal No. 149 of 1991.

The applicant has deposed that in accordance with the terms of the guarantee the intended defendants in the counter-claim undertook to satisfy any outstanding sums in the loan account. By seeking to counter claim the outstanding sums from the two intended defendants in the guarantees the applicant's intention is to ensure that all the issues arising from the loan agreement are determined together. There will be no prejudice to the respondent. The application is allowed. The amendments sought in the draft annexed to the application is granted.

I make no orders as to costs.

Dated and delivered at Meru this 12th .day of ...May... 2008.

W. OUKO

JUDGE