



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NYERI**

**Civil Case 113'B' of 2001**

**BENSON MACHARIA GATEI ..... PLAINTIFF**

**Versus**

**NYERI COUNTY COUNCIL ..... DEFENDANT**

**RULING**

The defendant by a chamber summons brought under **Order VIA Rules 3 and 8** of the Civil Procedure Rules dated 24<sup>th</sup> October 2007 seeks leave to file an amended statement of defence and counter claim. In support of that application the defendant relied on the grounds that the lease agreement between it and the plaintiff ended in February 2007. While taking over the premises the defendant spent a substantial amount of money to rehabilitate the suit premises. The defendant has found it necessary to amend its defence and counter claim to reflect the amounts which were so expended. The proposed amendments are necessary for the purpose of determining the real question in controversy between the parties. The plaintiff opposed the application by the defendant. In opposition the plaintiff argued that one of the grounds relied on by the defendant was similar to the ground relied on by the defendants application dated 14<sup>th</sup> May 2002. The plaintiff further argued that the application is **res judicata** because of relying on a similar ground to a previous application. In response to that argument I confirm that I have looked at the application dated 14<sup>th</sup> May 2002. That application was made by the defendant seeking to amend its defence to correct its period of tenancy of the plaintiff. The present application the defendant seeks to amend the defence to claim the amount expended in repair of the premises which were previously occupied by the plaintiff. I reject therefore the plaintiff's argument that the application is **res judicata**.

In the case of **KENYATTA NATIONAL HOSPITAL vs KENYA COMMERCIAL BANK LTD & ANOTHER (2003) 2 EA** the court set out the principles that should guide a court considering an application for amendment. The holding of that case was:-

***“the principles governing the grant of leave to amend pleadings are well settled. The general rule is that the amendments to pleadings sought before the hearing should be freely allowed if they can be made without injustices to the other side, and there is no injustice if the other party can be compensated by costs (EASTERN BAKERY vs CASTELIN (1958) EA 461 ; OCHIENG AND OTHERS VS FIRST NATIONAL BANK OF CHICAGO Civil Appeal Number 149 of 1991 followed). It was in the greater interest of justice to breathe life into the plaintiff's action by allowing the amendment in order to properly constitute the plaintiff. Application allowed.”***

In considering an application for amendment the court should bear in mind that the power to allow amendment is intended to determine the true, substantive merits of the case. The amendments should be made timeously. The power to grant leave to amend can be exercised by the court at any stage in the proceedings. Bearing that in mind I have considered the application herein and I do find that the same is merited. The court therefore grants leave to the defendant to further amend its defence and counter claim in terms of the proposed amendments attached to the chamber summons dated 24<sup>th</sup> October 2007. The defendant shall file and serve that further amended defence within 14 days from this date hereof. The plaintiff is granted leave to file an amended reply and defence to that counter claim within 14 days of service. The costs of the chamber summons dated 24<sup>th</sup> October 2007 shall be in the cause.

**DATED AND DELIVERED THIS 25<sup>TH</sup> DAY OF JUNE 2008**

**MARY KASANGO**

**JUDGE**