



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (MILIMANI COMMERCIAL COURTS)**

**Civil Case 1132 of 2002**

**GEORGE CHAKIRIS MUIKIA..... PLAINTIFF**

**VERSUS**

**KENYA COMMERCIAL BANK LTD.....DEFENDANT**

**R U L I N G**

This is an application made by the plaintiff under the provisions of **Order VIA Rule 3** of the **Civil Procedure Act** seeking to be granted leave to amend his plaint in accordance with the draft amended plaint annexed to the affidavit in support of the application. The plaintiff states that he sought professional advice in respect of the loan amount owed to the defendant and has now realized that he requires to amend his plaint to enable him bring out the real issues in controversy. The defendant opposed the application on the grounds that the proposed amendments did not have any bearing to the matters in dispute between the plaintiff and the defendant.

This court considered the rival submissions made by Mr. E. K. Mutua on behalf of the plaintiff and by Mr. G. M. Mutua on behalf of the defendant. This court has unfettered discretion to allow any party to amend his pleadings provided the said amendments are for the purposes of bringing out the real issues in controversy or for the purposes of correcting any defect or error in the proceedings (*see Order VIA Rule 5 (1) of the Civil Procedure Rules*). I have perused the draft amended plaint annexed to the affidavit in support of the application. I am of the view that it raises valid issues for determination by the court. The proposed amendments clarify certain aspects of the plaintiff's case that were not previously clear. The defendant's concerns will be addressed when the defendant is given an opportunity to file a reply or amended defence to the amended plaint. The defendant will not be prejudiced if the amendment sought by the plaintiff are allowed.

In the premises therefore, the plaintiff's application to amend the plaint is allowed. The plaintiff is granted leave to amend, file and serve his plaint within ten (10) days of today's date. The defendant shall be at liberty to file a reply to the amended plaint within ten (10) days after service. The defendant shall in any event be awarded the costs of the application.

**DATED at NAIROBI this 18<sup>th</sup> day of JUNE, 2008.**

**L. KIMARU**

**JUDGE**