

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NAIROBI (NAIROBI LAW COURTS)

Civil Case 1736 of 1993

NYAMODE OCHIENG NYAMOGO.....PLAINTIFF

VERSUS

KENYA POSTS & TELCOMMUNICATION CORPORATION...DEFENDANT

RULING

By this Chamber Summons dated 19th December 2005 and expressed to be brought under Order VIA Rule 3 of the Civil Procedure Rules and Section 3A of the Civil Procedure Act the plaintiff seeks leave to amend his plaint as per draft amendment annexed herein.

The application is based on the ground that the amendment is to specify the full and real issues for determination.

The defendant was served with summons but did not file any papers to oppose the same.

Mr. Nyamogo learned counsel for the applicant submitted that the plaint sought to be amended was filed on 13th April 1993. Then the applicant was seeking injunctive relief from the then respondent Kenya Posts and Telecommunication Corporation. Thereafter the defendant was dissolved and liabilities thereof were distributed among Telkom Kenya, Postal Kenya and Postal Pension Scheme. The applicant was forced to amend the plaint to include all these entities in the plaint. Thereafter it was discovered that the instant suit was vested in Telkom Kenya and hence necessitating the amendment to remove the other defendants from the suit. In the original plaint the applicant had prayed for several prayers among them special damages.

In that plaint he had indicted in the body of the plaint that particulars of special damages would be supplied at the time of the hearing. When the matter was confirmed for hearing the applicant engaged the services of a qualified accountant who prepared a full report of his claim for special damages. When the matter came up for hearing the plaintiff attempted to make an oral application to amend the figures for special damages under Order VIA Rule 8 of the Civil Procedure Rules which allow oral amendment but counsel for the defendant opposed the oral application on the ground that he had no instructions and the court ruled that the plaintiff do file a formal application and hence this application.

The object of amendment of pleadings is to enable the parties to alter their pleadings so as to ensure that the litigation between the parties is conducted not on false hypothesis of the facts already claimed but rather on the basis of the true state of facts or relief or remedy which the parties really and finally intend to rely or to claim.

The powers of the court to amend pleadings are donated by Order VIA of the Civil Procedure Rules and are intended to make more effective the function of the court to determine the true substantive merits of the case, to have more regard to substance than to form and thus to free the parties and the court from the technicalities or formalities of procedure.

The guiding principle of cardinal importance on the question of amendment is that generally speaking all such amendments ought to be made for the purpose of determining the real question in controversy

between the parties to any proceedings or correcting any

defect or error in any proceedings. The rule of conduct of the court is that, however, negligent or careless and however late the proposed amendment, the amendment should be allowed if it can be made without injustice to the other side.

There is no injustice if the other side can be compensated for by costs . In **CROPPER V. SMITH (1884) 26 CH D. 700** at 710 BOWEN LJ had this to say:

“I think it is well established principle that the object of the courts is to decide the rights of the parties, and not to punish them for mistakes which they make in the conduct of their cases by deciding otherwise than in accordance to their rights.”

In the instant case the amendments sought are necessary to enable the court to determine the real question of controversy between the parties in these proceedings.

For the reasons stated above the plaintiff’s application is allowed in terms of Prayer 1 of the Chamber Summons dated 19th December 2005 with no order as to costs.

Dated and delivered at Nairobi this 6th day of February 2007.

J.L.A. OSIEMO

JUDGE