



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

**Civil Case 124 of 2007**

**NATIONAL BANK OF KENYA LTD.....PLAINTIFF**

**VERSUS**

**MAGUT AGENCIES LTD:.....DEFENDANT**

**R U L I N G**

Before me is an application under Order VIA Rule 2 and 16 and order VI rule 11 of CPR. It seeks the following orders:-

1. The amended plaint filed on 14<sup>th</sup> September 2007 are served on the same day be disallowed.
2. Costs of this application

The plaintiff/Respondent commenced this suit vide a plaint filed in court on 18<sup>th</sup> July 2007. The defendant/applicant filed a defence on 31<sup>st</sup> August 2007. This defence was served on the counsel of the plaintiff on 3<sup>rd</sup> August, 2007. On 14<sup>th</sup> August 2007 the plaintiff filed the amended plaint without leave of the court. This is the amended plaint that has offended the defendant. Mr. Mbugua submitted that the filing of that amended plaint amounted to misleading as it offended provisions of order 6 rule 11 and order 6A rules 2 and 16 CPR. He said no leave of the court was sought before the amendment was done. Further he said the amendment was a reaction to the defence filed by the applicant. The plaintiff should have filed a reply to the defence and not file an amended plaint. To do so is misleading.

Application was opposed. Mr. Mutei submitted that the amended plaint was filed 11 days after service of the defence. Pleadings are closed 14 days after service of the defence. A party can amend his pleadings any time before pleadings are closed.

As I stated the application is said to be brought under order 6A rule 2 and 16 and order 6 rule 11 CPR. I have looked at both orders and find no rule 16 under order 6A CPR. Perhaps the applicant had in mind rule 16 of order 6. However that as it may be, I have carefully considered the application and find the same lacks merit. It is not a correct position as Mr. Mbugua holds that a party served with a defence has only one option to file a reply to the defence nor is it correct that a plaintiff cannot file an amended plaint without leave of the court. Order 6A rule 1 (1) CPR clearly allows a party to amend pleadings before the close of pleadings. The sub-rule provides:-

**“ Any party may, without leave of the court amend any pleadings of his once at any time before the pleadings are closed”.**

Order 6 rule 11 CPR provides as to when pleadings are closed. It states:-

**“The pleadings in a suit shall be closed fourteen days after service of the reply or defence to counterclaim, or, if neither is served, fourteen days after service of the defence, notwithstanding that any order or request for particulars has been made but not complied with”.**

A clear reading of that rule shows that there is no mandatory requirement to a plaintiff served with a defence to file a reply to that defence. If he chooses not to then there is joinder of issues as provided in rule 10 of that order. If no reply to the defence is filed then pleadings close 14 days after service of the defence. In this case defence was served on 3<sup>rd</sup> August, 2007 and fourteen days expired on 17<sup>th</sup> August, 2007. The amended plaint was filed on 14<sup>th</sup> August 2007 well within the period provided for under Order 6A Rule 1(1) CPR. The plaintiff did not need leave of the court to file that amended plaint.

Under Order 6A rule 2 the applicant was entitled to apply to challenge the amended plaint filed. However I have looked at the same and I am satisfied that even if an application for leave to amend was presented then I would have granted the same. The amendment sought to clarify the year when loan facility was given to the applicant. True the applicant raised that in his defence but I see no prejudice suffered by the applicant due to that clarification.

In the circumstance I find no merit in the application and dismiss the same with costs.

Dated and Delivered at Eldoret on 5<sup>th</sup> day of March, 2007.

KABURU BAUNI

JUDGE

IN PRESENCE OF:-

C/C - David

Mr. Mutei for Respondent

Mrs. Chepchirchir for Applicant.