



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

AT NAIROBI (NAIROBI LAW COURTS)

Civil Case 200 of 2004

CHERUIYOT CHELULE ARAP AND ANOTHERPLAINTIFFS

VERSUS

REGIONAL CENTRE FOR SERVICES IN SURVEYING, MAPPING AND REMOTE

SENSINGDEFENDANT

R U L I N G

By the Chamber Summons dated 6.6.2006 the plaintiffs seek leave to amend their plaint dated 14.4.2004 in the manner set out in the draft annexed to the supporting affidavit of the 6th plaintiff. The application is based on the grounds that the proposed amendments are necessary for the purpose of determining the real question in controversy between the parties and fully plead particulars of special damages and further correct a calculation error in the particulars of special damages. The plaintiffs contend that the said amendments will not occasion any prejudice to the defendant.

In the supporting affidavit it is deponed that at the time of filing the suit the plaintiffs had not completed calculating their full dues arising from the defendant's decision to declare them redundant and further that there are errors and omissions that they wish to correct in the plaint. It is also deponed in the said affidavit that the defendant's Director General has previously admitted that indeed the plaintiffs were declared redundant and consequently the defendant stands to suffer no prejudice if the amendment is allowed.

The defendant has filed no replying affidavit to controvert the averments in the supporting affidavit nor have the grounds of opposition been filed. I however allowed counsel for the defendant to respond to the application on matters of law only. In the event counsel for the defendant submitted that the case relied upon by counsel for the plaintiffs was irrelevant and on that basis urged me to dismiss the application.

In my view, the defendant's response to the application does not in any way answer the plaintiff's application. Counsel for the defendant did not address a single factor that has to be considered in deciding whether or not to allow amendments to pleadings.

Under Order VI of Rules 3 and 5 of the Civil Procedure Rules, the court has a wide discretion to grant leave to amend pleadings and at any stage of the proceedings the object being to facilitate the determination of the real question in controversy between the parties. In Bullen & Leake 4th Edition at page 124 the Learned authors state as follows:-

“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 determining the real question in controversy between the parties to any proceedings or of correcting any defect or error in any proceedings. The rule of conduct of the court is that however negligent or careless may have been the first omission, 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 but if the amendment will put the other side into such a position that they must be injured it ought not to be made.”

The plaintiffs in my view have squarely and properly invoked the jurisdiction to amend. The proposed amendments are not only necessary and relevant but will also facilitate the determination of the real question in controversy between the plaintiffs and the defendant. The defendant on the other hand has not demonstrated that it will suffer any prejudice or injury that cannot be compensated for by an award of costs.

In the result, the application is allowed. The plaintiffs are granted leave to amend the plaint dated 14.4.2004 in terms of the draft amended plaint which will be deemed as duly filed on payment of the requisite court fees. The amended plaint should be served within 15 days from the date hereof. The defendant is at liberty to file and serve amended defence if necessary within 15 days of the date of service of the amended plaint.

The plaintiff will bear the defendant’s costs of this application.

Orders accordingly.

DATED and DELIVERED at NAIROBI this 15th day of May 2007.

Rea in the presence of:- Macharia for the plaintiff.

F. AZANGALALA

JUDGE

15/5/07