



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

**Civil Suit 74 of 2003**

**CHRISTOPHER LEBO & 331 OTHERS ..... PLAINTIFFS**

**VERSUS**

**THE KENYA POWER & LIGHTING CO. LTD. .... DEFENDANT**

**R U L I N G**

The suit herein is still pending and has yet to be set down for trial. There have been numerous interlocutory applications and which have been determined.

On 12<sup>th</sup> January, 2007, the Defendant made an application to have various paragraphs of the Amended Plaintiff struck out. Some of the grounds for the application are:-

- (i) That the averments contained in their amended plaintiff are imprecise and insufficient making the Defendant unable to know exactly know what case it has to meet at the trial.
- (ii) That the Plaintiffs seek special damages yet they have failed to explicitly plead and particularize each damage to a standard required by law.

The application was finally set down for hearing for two (2) days, 17<sup>th</sup> and 18<sup>th</sup> July, 2007. On the 6<sup>th</sup> June, 2007 the Plaintiffs filed an application for stay of proceedings and pending the determination of an application for leave to amend their plaintiff. The Plaintiffs also sought the leave of the Court to amend their plaintiff. The Plaintiffs had their application certified as urgent and the matter also fixed for hearing today.

The application for leave to amend was only served on the Defendant's Counsel's office in the course of yesterday when he had already left to come to Eldoret for today's hearing.

The Plaintiffs wish to have their application heard first. After consideration of the application, Mr. Kajwang for the Defendant has urged this Court to have the two applications heard together as they raise intertwined issues. He proposes that the application to strike out be treated as a reply to the application to amend.

I have considered the submissions by Counsels. I have also considered the purpose for amendment of pleadings and the principles of amendment of pleadings. I have also considered the principles to be considered when entertaining an application to strike out a plaintiff under the provisions of Order VI, Rules 8 and 13 (1) of the Civil Procedure Rules. I have also perused the two applications herein.

I do not think that it would be appropriate for the two applications to be heard together and to treat one

as an answer to the other. Yes the issues may be intertwined but the objects of each application are different and are not entirely based on the same facts. It would be impractical and confusing to have the two applications heard together.

I hereby direct that the two applications be heard separately. Which should take precedence and be heard and determined first? It is this Court's view that a Court of law ought to be always inclined to sustain legal suits so that they are finally heard on their merits and preferably upon full trial. The Plaintiff's application came first and is for striking out of several of the paragraphs in the plaint. The second application intends to amend the plaint most likely a reaction due to the intended striking out application.

As a general rule, leave to amend ought to enable the real questions in issue between the parties to be raised on the pleadings. The Defendant's reason for the application to strike out is, inter alia, that some averments are imprecise and insufficient for the Defendant to plead to. If this is the case, I think it would be fair and just that the application for leave be considered first. If it is allowed the Defendant will decide whether to prosecute its application or not. If it is not allowed, then the application to strike out may proceed to hearing.

I therefore do hereby order and direct that the application by the Plaintiffs for leave to amend the plaint be heard first. The Defendant is given leave to file and serve its Replying Affidavit and grounds of opposition, if any within the next thirty (30) days. I will now give a hearing date for the said application in the new term. The Defendant's application dated 12<sup>th</sup> January, 2007 is stood over generally. The Plaintiffs shall pay the Defendant's Counsel's costs of travel and subsistence. The Defendant supply the particulars to the Plaintiffs by the next hearing date for this Court's directions.

DATED AND DELIVERED AT ELDORET ON THIS 17<sup>TH</sup> DAY OF JULY, 2007.

M. K. IBRAHIM

JUDGE

Delivered in the presence of:

Mr. Kajwang with Mr. Gumbo for the Defendant

Mr. Gicheru also holding brief for Mr. Buluma & Mr. Mutei for the Plaintiffs