

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

Civil Case 182 of 2003

FRANCIS CAREY APANGAPLAINTIFF

V E R S U S

KENYA COMMERCIAL BANK LTDDEFENDANT

R U L I N G

There has been considerable delay in the preparation and delivery of this ruling. The same was occasioned by my serious illness in the year 2006 and the long attendant recuperation. The delay is regretted.

The Plaintiff seeks leave to amend its further amended plaint dated 30th July, 2005. This is by chamber summons dated 12th April, 2006. The grounds set forth on the face of the application are that the amendment sought is necessary and that the Defendant will not suffer any prejudice that cannot be compensated for by costs. There is a supporting affidavit sworn by the Plaintiff; to it are annexed a draft further amended plaint as well as some correspondences.

The Defendant has opposed the application as set out in the grounds of opposition dated 8th May, 2006. Those grounds are, that the application is an afterthought and contradicts the state of the pleadings, the agreed issues and other documents filed herein; that the application has been made after undue delay which has not been explained and which is incapable of being explained; that the application is frivolous, vexatious and not in the interests of justice; and that the amendments sought will cause the Defendant great prejudice. There is a replying affidavit sworn by one **SAMUEL OKERO IGONYI** who describes himself as a fraud investigation officer with the Defendant.

I have duly considered the submissions of the learned counsels appearing, including the one case cited. That case is a Court of Appeal decision, **CENTRAL KENYA LIMITED vs TRUST BANK LIMITED & OTHERS, Nairobi Civil Appeal No. 222 of 1998** (unreported). The Court of Appeal stated in that case as follows:-

“The overriding consideration in applications (for leave to amend) is whether the amendments are necessary for the just determination of the controversy between the parties. Likewise, mere delay is not a ground for declining to grant leave. It must be such delay as is likely to prejudice the opposite party beyond monetary compensation in costs. The policy of the law is that amendments to pleadings are to be freely allowed unless by allowing them the opposite side would be prejudiced or suffer injustice which cannot be properly compensated for in costs.”

I may point out that under Order 6A, rule 3 of the Civil Procedure Rules (the Rules) under which the application is made the court may at any stage of the proceedings, on such terms as to costs or otherwise as may be just, and in such manner as it may direct, allow any party to amend its pleadings. So, there is no time limit within which an application to amend pleadings must be made; such application can be made at any stage of the proceedings.

The guiding principle is that leave to amend pleadings will be freely and liberally allowed unless there will be prejudice to the opposite party. There will be no such prejudice if the opposite party can be fairly

compensated by an award of costs.

I have perused the draft further amended plaint annexed to the supporting affidavit. The amendment sought to be introduced merely quantifies the financial loss and damages already pleaded. It is not a fresh cause of action. I do not see what prejudice the Defendant can possibly suffer that cannot be compensated for by an award of costs.

Having considered the matters placed before the court, I will allow the application and grant the leave sought. The Plaintiff may file a re-amended further amended plaint within 14 days of delivery of this ruling. The Defendant will have leave to amend its pleadings as may be necessary within 14 days of service upon it of the re-amended further amended plaint. The Defendant shall have costs of this application. There will be orders accordingly.

DATED AT NAIROBI THIS 15TH DAY OF AUGUST, 2007

H.P. G. WAWERU

J U D G E

DELIVERED THIS 17th DAY OF AUGUST, 2007