



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**Civil Case 166 of 2004**

**1. SILAS OKIBO MOSETI**

**2. RICHARD MAGAKI MOSETI .....PLAINTIFFS**

**V E R S U S**

**KENNEDY OMBUI ONTERE .....DEFENDANT**

**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 2006 and the long attendant recuperation. The delay is regretted.

This is an application by the Plaintiff (by chamber summons dated 31<sup>st</sup> January, 2006) for leave to further amend their pleadings. It is brought under Order 6A, rules 3, 5, 7 and 8 of the Civil Procedure Rules (the Rules). The grounds for the application as they appear on the face thereof are, that the suit chattel has already been sold to another party, and hence the need to amend; that the amendment sought to be made will assist the court in determining the real issues in controversy between the parties; that no prejudice whatsoever will be occasioned to the Defendant; and that it is in the interests of justice that the leave sought be granted. There is a supporting affidavit sworn by the 1<sup>st</sup> Plaintiff. To it is annexed a draft further amended pleadings.

The Defendant has opposed the application as set out in the grounds of opposition dated 6<sup>th</sup> February, 2006. Those grounds are, that the application is an abuse of the process of the court, is frivolous and misconceived; that the amendments sought are in bad faith; that those amendments offend provisions of the Limitations of Actions Act, Cap. 22; that the intended amendments introduce a new cause of action and that they are therefore prejudicial to the Defendant; and that the Plaintiffs have concealed material facts as regard ownership and alleged sale of the suit chattel.

I have considered the submissions of the learned counsels appearing, including the cases cited. The guiding principle in applications for leave to amend pleadings is that such leave will be liberally granted if no prejudice will be occasioned to the other party. There will be no such prejudice if the other party can be fairly compensated by way of costs.

To begin with, the application herein is neither frivolous nor misconceived nor an abuse of the process of the court as pleaded by the Defendant. The application is properly before the court seeking the exercise of judicial discretion.

I have perused the draft further amended pleadings. I can see no bad faith in the amendments sought to be introduced. There is also no new cause of action pleaded. Regarding the plea that the Limitation of Actions Act will be offended by the amendments, the Defendant may raise such defence as he deems necessary in an amended defence. I am therefore not satisfied that the amendments sought will occasion any prejudice to the Defendant.

Having considered all the matters placed before the court, I will grant leave to the Plaintiffs to further amend their pleadings. Such further amended pleadings may be filed within 14 days of delivery of this ruling.

The Defendant shall have leave to amend his defence within 14 days of service upon him of the further amended plaint. Costs of this application are awarded to the Defendant. There will be orders accordingly.

**DATED AT NAIROBI THIS 15<sup>TH</sup> DAY OF AUGUST, 2007**

**H. P. G. WAWERU**

**J U D G E**

**DELIVERED THIS 17<sup>th</sup> DAY OF AUGUST, 2007**