

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

(MILIMANI COMMERCIAL COURTS COMMERCIAL AND TAX DIVISION)

CIVIL CASE 660 OF 2005

MARGARET SOARESPLAINTIFF

V E R S U S

JANE OTIENODEFENDANT

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 for leave to amend the plaint. It is by chamber summons dated 18th April, 2005 under Order 6A, rules 3, 5 and 8 of the Civil Procedure Rules (the Rules). It is stated that the purpose of the amendment is to add a second plaintiff, and that the additional plaintiff is a necessary party. It is further stated that the amendment sought will assist in determination of the real issues in controversy, and that no prejudice will be occasioned to the Defendant. There is a supporting affidavit sworn by the 2nd Plaintiff. A draft amended plaint is annexed thereto.

The Defendant has opposed the application as set out in the grounds of opposition dated 17th May, 2006. process of the law.

There is no replying affidavit filed.

I have duly considered the submissions of the learned counsels appearing, including the cases cited. I must state emphatically at the outset that amendment of pleadings *per se* is not a proper way of adding a party to a suit. A proper application in that regard must be made under Order I, rule 10 of the Rules. Where a party is properly added under that rule, amendment of the plaint may be necessary, and the court may order that the plaint and other pleadings be appropriately amended. Where the party added is a defendant, then, as decreed by subrule (4) of rule 10 aforesaid, the plaint must be amended.

Inasmuch as the purpose of the amendment sought is to add another plaintiff in the suit, the application is clearly misconceived. It is incompetent and must be struck out. Let an appropriate application under rule 10 of Order I of the Rules be made.

In the event the application by chamber summons dated 18th April, 2006 is hereby struck out with costs to the Defendant. There will be an order accordingly.

DATED AT NAIROBI THIS 11TH DAY OF SEPTEMBER, 2007

H. P. G. WAWERU

J U D G E

DELIVERED THIS 14TH DAY OF SEPTEMBER, 2007