

**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)**

Civil Case 408 of 2005

STEPHEN WACHIRAPLAINTIFF

V E R S U S

1. CROWN ROCKSHIELD LTD

2. GEORGE ROGERSDEFENDANTS

R U L I N G

The Plaintiff seeks by chamber summons dated 5th September, 2006 leave to amend the plaint dated 22nd March, 2005. The application is brought under Order VIA, rule 3 of the Civil Procedure Rules (the Rules) which donates to the court the power to allow any party to amend his pleadings at any stage of the proceedings and on such terms as to costs or otherwise as may be just, and in such manner as it may direct. Rules 5 and 8 of the same order are also invoked.

Amendment is sought upon the grounds that the Plaintiff wishes to amend his claim in order to introduce a claim for special damages. The Plaintiff also seeks, under section 18 of the Civil Procedure Act, Cap. 21 (the Act, an order for transfer of the suit to a subordinate court for disposal upon the ground that the court has the necessary jurisdiction to try and determine the suit. The application is supported by the affidavit of the Plaintiff's advocate annexed thereto. To it is exhibited a draft amended plaint.

The Defendants have opposed the application as set out in the grounds of objection filed on 19th September, 2006. Those grounds are, *inter alia*:-

1. That the amendments sought introduce a new cause of action which does not arise out of the same facts, or substantially the same facts, as the cause of action in the plaint.
2. That the application for transfer of the suit has been brought after an inordinately long time.

I have considered the submissions of the learned counsels appearing, including the cases cited. I have also perused the plaint and the draft amended plaint. The guiding principle in applications for amendment is that the court should liberally allow such applications so that the real question in controversy between the parties can be determined. Under rule 5 of Order VIA the court may in fact move itself to order that any document in the proceedings, save a judgment or order, be amended in such manner as it directs and on such terms as to costs or otherwise as are just.

In the instant case the Plaintiff seeks to amend his plaint to plead special damages arising out of the same facts as are pleaded in the original plaint. I do not see what prejudice this may occasion the Defendant that cannot be compensated by an award of costs. I am therefore inclined to grant leave to amend.

Regarding the application for transfer of the suit to a subordinate court, the suit is still in its early stages in this court. No discovery under Order X, rule 11A of the Rules has been done yet; no statement of issues has been filed. The complaint by the Defendant that the application for transfer has been brought after an inordinately long time is thus not justified.

In the circumstances I will allow the chamber summons dated 5th September, 2006. The Plaintiff may file an amended plaint within seven (7) days of delivery of this ruling. The amendments must be as set

out in the draft amended plaint annexed to the application. The Defendant may within fourteen (14) days of service of the amended plaint file an amended defence. After the filing of the amended pleadings this suit shall be transferred to Chief Magistrate's court at Milimani for disposal. The Defendant shall have costs of this application. Those shall be the orders of the court.

DATED AT NAIROBI THIS 13TH DAY OF NOVEMBER, 2007

H. P. G. WAWERU

J U D G E

DELIVERED THIS 16TH DAY OF NOVEMBER, 2007