



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

**Civil Suit 43 of 2003**

**MOHAMEDALI KHATAU THAVER.....PLAINTIFF**

**VERSUS**

**DELPHIS BANK LIMITED.....DEFENDANT**

**R U L I N G**

The defendant has moved this court with a chamber summons application brought under Order 6A Rule 3 (1) of the Civil Procedure Rules, seeking an order for leave to amend the defence.

The defendant in this suit is Delphis Bank Ltd. The supporting affidavit, sworn by Rave Patnaik states that Delphis Bank Ltd, at the time this suit was filed, October 2003, was under statutory management. That after emerging from the said management Delphis Bank Ltd changed its name to Oriental Commercial Bank td. Annexed to the said affidavit is a certificate of Change of Names.

It was pleaded on behalf of the defendant that the application for the amendment of defence was necessary to amend the defendant's name to be Oriental Commercial Bank Limited.

Although the plaintiff's counsel was served with the application they did attend the hearing.

The law of amendment of pleading is clear that amendments are to be freely granted before trial subject to there being no prejudice to the opposite party and of course there can be no injustice where the other party can be compensated by an award of costs.

The amendment sought by the defendant is one only, that the name of the defendant, on the defence, be amended to read Oriental Commercial Bank Ltd. The problem with such a prayer is that the defence, if allowed to be amended, would show the defendant to be Oriental Commercial Bank Ltd, whilst the plaintiff would still be reflecting the defendant as Delphis Bank Limited.

In making the present application the defendant has caught the '*wrong side of the stick.*' It cannot be that two pleading would be allowed to reflect two different parties as defendants. I find that the defendant's application is misconceived for, it ought to have been brought under Order 1 Rule 10 (2) where the court can order at any stage of proceedings, where a party is wrongly joined, to be substituted with the correct party.

The defendant's application is misconceived and must fail. The application dated, 7<sup>th</sup> December 2005 is dismissed with no order as to costs.

**MARY KASANGO**

**JUDGE**

Dated and delivered this 10<sup>th</sup> day of February 2006

**MARY KASANGO**

**JUDGE**