



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

**Civil Suit 270 of 2002**

**EDWIN KAMAU MUNIU.....PLAINTIFF**

**VERSUS**

**NATIONAL BANK OF KENYA LTD.....DEFENDANT**

*And by way of Counter-claim*

**NATIONAL BANK OF KENYA LTD.....COUNTER-CLAIMANT**

**VERSUS**

**EDWIN KAMAU MUNIU.....1<sup>ST</sup> DEFENDANT**

**SHERIE KAY LTD.....2<sup>ND</sup> DEFENDANT**

**R U L I N G**

This is an application (chamber summons dated 30<sup>th</sup> November, 2005) by the Defendant/Counter-Claimant under Order 1, rule 10 of the Civil Procedure Rules for two main orders, one, that one NAOMI MUNIU be joined in this suit as a defendant in the counter-claim and, two, that leave be granted to the Defendant/Counter-Claimant to amend its defence and counter-claim in terms of the draft annexed to the application. The application is brought upon the grounds (which I have paraphrased somewhat):-

1. That the said Naomi Muniu is a director of SHERIE KAY LTD., the 2<sup>nd</sup> Defendant in the counter-claim.
2. That she guaranteed the repayment of the debt the subject-matter of the counter-claim.
3. That the advocates previously on record for the Defendant/Counter-Claimant omitted her name from the counter-claim.
4. That by enjoining Naomi Muniu in the counter-claim, all necessary parties to the suit will have been brought before the court.
5. That the orders sought will not prejudice the defendants to the counter-claim in any way.
6. That it is just and proper that the application be allowed.

There is a supporting affidavit sworn by one ZIPPORAH MOGAKA, a manager of the

Defendant/Counter-Claimant.

The 2<sup>nd</sup> Defendant to the counter-claim has opposed the application upon the two grounds appearing in the grounds of opposition dated 8<sup>th</sup> December, 2005. Those grounds are that the application is misconceived, frivolous, vexatious and otherwise an abuse of the process of the court; and that Naomi Muniu is not a necessary party to these proceedings. There is a replying affidavit sworn by the Plaintiff/1<sup>st</sup> Defendant to the counter-claim.

I have read the supporting and replying affidavits. I have also given due consideration to the submissions of the learned counsels appearing, including the cases cited. It is apparent from the material placed before the court that Naomi Muniu was one of the guarantors of the loan advanced by the Defendant/Counter-Claimant to the 2<sup>nd</sup> Defendant to the counter-claim, which loan is the subject matter of the counter-claim. It should therefore be obvious to anyone that she is a necessary party in the counter-claim. It is not quite clear to me why the application to join her has been opposed. I will allow the application to join her as 3<sup>rd</sup> Defendant in the counter-claim. I will also, in the interests of justice, grant leave to the Defendant/Counter-Claimant to file an amended defence and counter-claim within fourteen (14) days from the date of delivery of this ruling. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants to the counter-claim may within a similar period of time from the date of service upon them of the amended defence and counter-claim file amended defences or replies to the counter-claim. The 3<sup>rd</sup> Defendant to the counter-claim may within fourteen (14) days of service upon her of the amended defence and counter-claim file her defence or reply to the counter-claim. I shall award costs of the application to the 1<sup>st</sup> and 2<sup>nd</sup> Defendants in the counter-claim. Orders accordingly.

**DATED AND SIGNED AT NAIROBI THIS 22<sup>ND</sup> DAY OF MARCH, 2006.**

**H.P.G. WAWERU**

**JUDGE**

**DELIVERED THIS 24<sup>TH</sup> DAY OF MARCH, 2006.**