

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI COMMERCIAL COURTS)
Civil Case 285 of 2004

BRITISH AIRWAYS PLC (carrying on business as

BRITISH AIRWAYS WORLD CARGO).....PLAINTIFF

VERSUS

FREIGHT IN TIME LIMITED.....DEFENDANT

R U L I N G

This is an application (by chamber summons dated 13th December, 2005) for leave to amend the plaint brought under Order 6A, rule 3 of the Civil Procedure Rules. The amendment sought is to substitute US\$ 371,967/00 as the sum claimed in place of US\$ 298,413/00. The Defendant seems to oppose the application upon the ground that the claim is denied. This is not a sufficient reason to oppose amendment. The Defendant will have the opportunity to defend the claim at the trial.

The general principal in matters of amendment to pleadings is that amendments should be freely allowed if they can be made without injustice to the other side, and usually there will be no injustice if the other side can be compensated by costs. See the East African Court of Appeal Case of **EASTERN BAKERY –VS- CASTELINO (1958) EA 461**.

Having considered all the materials placed before the court, and having considered the submissions of the learned counsels appearing, I hold that no injustice will be occasioned to the Defendant by permitting the amendment sought. I will therefore allow this application. The Plaintiff may file an amended plaint within seven (7) days of delivery of this ruling. The Defendant may in its turn file an amended defence within fourteen (14) days of service upon it of the amended plaint. The Defendant shall have the costs of this application. Orders accordingly.

DATED AND SIGNED AT NAIROBI THIS 22ND DAY OF FEBRUARY, 2006.

H.P.G. WAWERU

JUDGE

DELIVERED THIS 3RD DAY OF MARCH, 2006.