



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KISUMU**

**Civil Case 98 of 2001**

**CHANNAN SINGH SANTA**

**SINGH .....PLAINTIFF**

**-VERSUS-**

**AGRICULTURAL FINANCE CORP. ....DEFENDANT**

**R U L I N G**

Coram J. W. Mwera Judge,

Menezes for the plaintiff,

Naeku for the defendant,

Raymond CC.

Mr. Menezes argued that plaintiff's chamber summons dated 29.8.2005 which was brought under Order 6A, rules 3(1), 5(1), Civil Procedure Rules and Section 3A, Civil Procedure Rules. The main prayer is that, the plaintiff be allowed to amend his plaint filed here on 21.3.2001 to incorporate and specifically, plead the name of Co-operative Bank of Kenya Ltd, which in the earlier plaint had simply been referred to as another financial institution. That this amendment helps the litigants with clearer pleadings and the court with such certainty necessary in enabling it to finally determine the real issues in controversy. That indeed the defendant corporation will not suffer any prejudice. That the application to amend, although coming some four or - so years since the initial plaint was filed, the court should still consider to grant the orders and if need be, the defendant has liberty to amend its defence. That all this has come before judgment (the trial is yet to commence) and any prejudice may as well be compensated with costs. The plaintiff's stand seemed to be that leave to amend pleading should be automatic. Not quite so. The provisions of law give the court discretion to consider and allow or refuse leave to amend. It is said in authorities (from Halsbury's Laws of England to applicable cases, and both sides quoted several) that such leave should generally be granted.

Mr. Naeku held the position that coming this late in the day, the amendments to the plaint should be refused because the defendant would be prejudiced by them. That some witnesses had died or forgotten the details touching on the subject matter thus, making it hard for that litigant to properly defend the "new" suit when it comes to pleadings and preparation of witnesses. It was even suggested that new matter changing the substratum of the original suit, was actually being put forth by way of amendments and that the whole thing was prompted by bad faith. Again some authorities were put forth on the aspect of delay in seeking amendments and that the plaintiff had not explained the delay here. And that the disputed issues herein could as well be determined without the sought amendments.

After hearing both sides, this court is of the view that the leave sought to amend the plaint be and is hereby granted. A duly amended plaint to be filed, paid for and served. In case the defendant deems it necessary to amend its defence, it may do so at the expense of the plaintiff. The court is satisfied that pleadings may be amended at any stage, even during trial but before judgment, so long as the amendments are necessary for due determination of issues in controversy. The applicant has demonstrated that the pleadings are made clearer by that amendments sought as regards the Co-operative Bank that had earlier been simply called a finance house. The period involved is also updated. The suit still falls within time and the defendant has not been deprived of a defence e.g. of limitation of time at

all. Indeed it was not demonstrated that any bad faith attended the application to amend and it has not been shown that the defendant's witness have passed on or have faded memories of the facts of this case. Although Mr. Menezes did not say exactly when instructions were received to necessitate the move to amend. Even if some four years have elapsed before the amendments were sought, this court is still minded to grant them. But this is not to say that a party will always be allowed to amend even if it took eons years for the case to come to trial. Whoever desires to amend should be alert and move at the earliest opportunity to amend.

In sum, the application to amend is allowed as stated earlier but costs go to the defendant for this application, and if it desires to amend, its defence.

Orders accordingly.

Delivered on 29.5.2006.

**J. W. MWERA**

**JUDGE**

*JM/hao*