



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (NAIROBI LAW COURTS)**  
**Civil Case 118 of 2003**

**CYKA HOLDINGS LIMITED .....PLAINTIFF**

**VERSUS**

**JOHNSON JOSHUA KINYANJUI .....1<sup>ST</sup> DEFENDANT**

**VINUBHAI VIRPAL SHAH .....2<sup>ND</sup> DEFENDANT**

**HARITH SHETH T/A HARITH SHETH ADVOCATE .....3<sup>RD</sup> DEFENDANT**

**RULING**

By its Chamber Summons of the 10.2.2006 the Plaintiff seeks leave to amend its Plaint in accordance with the proposed amended Plaint annexed to the supporting affidavit in support of the application.

The application is made pursuant to Order VIA Rules 3, 5, 7 and 8 of the Civil Procedure Rules and other provisions.

The power to allow amendments is discretionary and is there to enable the court to be able to determine the real question in controversy between the parties.

The Plaintiff based its case in breach of agreement and now wishes to amend to delete a claim against the 3<sup>rd</sup> Defendant in negligence and include a claim against all of the Defendants in quasi contract.

The application was opposed. Both Mr. Mugo for the 1<sup>st</sup> and 2<sup>nd</sup> Defendant and Mr. Ngunjiri for the 3<sup>rd</sup> Defendant opposed the application on the ground that the amendments sought were time barred. The Plaintiff alleges that the Plaintiff did not discover the breach until the 16<sup>th</sup> June 1997. The Plaintiff was filed within six years from the alleged breach. This is an alternative claim for relief arising from the same facts. It does not introduce a new cause of action and as such in my view cannot be said to be time barred.

I am of the view that the proposed amended plaintiff is necessary to determine the real matters in controversy and therefore, allow this application with costs in the cause.

The Amended Plaintiff to be filed and served within 14 days from today. The Defendants at liberty to file an amended Defence within a further 14 days.

Dated and delivered at Nairobi this 25<sup>th</sup> day of May, 2006.

**P. J. RANSLEY**

**JUDGE**