



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI COMMERCIAL COURTS)
Civil Suit 64 of 2006**

VIJAY KUMAR DAVALJI KANJI GOHIL.....PLAINTIFF

VERSUS

SURESH MOHANLAL FATANIA1ST DEFENDANT
SHANTILAL KARSANDAS VARIA2ND DEFENDANT
TREO APRATMENTS LTD.....3RD DEFENDANT
SUNIL KUMAR POPTALAL DAVIDA4TH DEFENDANT
AMEET DIPAK BHATESSA.....5TH DEFENDANT
CHUNILAL SHANTILAL KHIMASIA6TH DEFENDANT
JAYANTILAL JETHA HARJI PARMAR.....7TH DEFENDANT
JAYANTILALA K. HARIA.....8TH DEFENDANT
MAHEDRA K. PATHAK.....9TH DEFENDANT

RULING

The plaintiff filed a chamber summon dated 22nd February 2006, which came under a certificate of urgency.

The chamber summons after the initial exparte hearing was fixed for hearing twice but did not proceed to hearing. It seems that on 10th may 2006, without leave of the court the plaintiff amended the aforesaid chamber summons and filed it in court. That amended chamber summons was filed without the support of an affidavit.

When the chamber summons came up for hearing on 18th May 2006 the defendant raised a preliminary objection on the following terms: -

“That the said application is incurably defective as a chamber summons is not a pleading within the meaning of section 2 of the Civil Procedure Act therefore it is incapable of being amended with or without leave having been sought and obtained.”

Defence stated that chamber summons is not a pleading as envisaged by order 6A. Defence referred to

section 2 of the Civil Procedure Act to find that definition of pleadings. That section provides:

“Pleadings includes a petition or summons, and the statements in writing of the claim or demand of any plaintiff, and of the defence of any defendant thereto, and of the reply of the plaintiff to any defence or counterclaim of a defence.”

Defence said that the plaintiff amended its chamber summons without leave of the court. For this reason defence argued that the chamber summons is incurably defective and that the same ought to be struck out.

Plaintiff in response said that leave was not necessary to amend chamber summons because pleadings had not closed. He further argued that if one could amend plaintiffs they could also amend chamber summons. Plaintiff referred to section 2 of the Civil Procedure Act and stated pleadings were defined to include summons. That being so, the plaintiff said that summons could be amended.

Plaintiff was of the view that the defendants had failed to show what prejudice, if any they would suffer if the chamber summons as amended proceeded for hearing.

The defence in final reply stated that the crux of the matter was that a chamber summons was not a pleading and was therefore not covered by order 6A of the Civil Procedure Rules. In the courts view chamber summons are not pleadings as defined by section 2 of the Civil Procedure Act. The section amongst others states that summons are pleadings. It is clear that the summons referred to therein are originating summons and not chamber summons. Pleadings are those that originate the action or the claim and those that respond to such a claim. The Black’s Law Dictionary defines pleadings as:

“The formal allegations by the parties to a law suit of their respective claims and defences with the intended purpose of being to provide notice of what is to be expected at trial.”

It is clear from the said definition that a chamber summon being of interlocutory nature is not a pleading, and its amendment does not fall within order 6 A.

Having found that a chamber summon is not a pleading and cannot therefore be amended as per order 6 A, the court does not accept the defence argument that, therefore a chamber summon is incapable of amendment. I am of the view that the very reason why amendment is sought is that the court may be able to determine the real question in controversy. Since that is the purpose of amendment the court, in the absence of specific power to amend a chamber summons, can invoke its inherent power to grant leave. But having found so I am of the view that leave has to be sought and obtained before an amendment can be effected. For that reason the defendant’s preliminary objection will succeed for indeed the chamber summons hereof amended on 10th May 2006 cannot stand without the leave of the court.

In the court view if the plaintiff does succeed to get leave to amend the chamber summons it would not be necessary for another affidavit to be filed for indeed a party can rely on the previous affidavit on record supporting the un amended chamber summons.

The court’s order will be

- (1) That the plaintiff’s chamber summons filed and amended on 10th May 2006 be and is hereby struck out.**
- (2) That the defendants 4th to 9th are granted costs of the preliminary objection dated 18th May 2006.**

MARY KASANGO

JUDGE

Dated and delivered this 15th May 2006.

MARY KASANGO

JUDGE