



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**  
**AT NAKURU**

**Civil Case 204 of 1998**

**FESTUS KIMUTAI LANGAT.....**  
**.....PLAINTIFF**

**VERSUS**

**KENYA POSTS & TELECOMMUNICATIONS POSTAL CORPORATION OF KENYA.....**  
**.....DEFENDANT**

**RULING**

By an application dated 19<sup>th</sup> September, 2005, the applicant sought leave to amend his plaint further to the amendment which he had done on 5<sup>th</sup> November, 2003. As per his affidavit in support of the said application, the further amendments were necessary so that his specific claims on special damages could be brought out. He further deposed that the respondent would not be prejudiced in any way if the application was granted since the plaintiff had not closed his case and had not even been cross-examined. The applicant annexed a copy of the draft further amended plaint and the main amendments which he sought to introduce were in respect of special damages as shown in paragraph 9(b) thereof. The applicant cited **GENERAL MANAGER, E.A.R. & H.A. VS THIERSTEIN [1968] E. A. 354** in support of his application. In that decision, it was held that amendments to pleadings enables parties to bring out the real questions and issues in controversy before the court for determination.

The respondent opposed the said application and filed grounds of objection and stated that:-

- ( i) the application was misconceived and an abuse of the process of the court.
- ( ii) the amendment sought was prejudicial to the respondent.
- ( iii) the proposed amendments sought to be brought were an afterthought and were not made in good faith.
- (iv ) the applicant was guilty of laches.

Mr. Akango for the respondent submitted that the court's power to allow or refuse amendments to pleadings had to be exercised judicially and the court was obliged to consider the prejudice that the respondent was likely to suffer if the application was allowed. He pointed out that the amendment was being sought when the plaintiff/applicant was just about to finish his examination in chief. He saw bad faith in the applicant's proposed further amendments and added that allowing the application was

tantamount to starting the matter *de novo*.

In support of the aforesaid submissions, Mr. Akang'o relied on *MULLA ON THE CODE of CIVIL PROCEDURE*, Volume II 15<sup>th</sup> edition, pages 1191 to 1193 and page 1201 wherein the various issues which a court ought to take into account in deciding an application of this nature were set out. He further cited *OMAR VS E.A. CARGO HANDLING SERVICES LTD [1985] KLR 837*. In that case, the court declined to grant leave for amendment of a plaint where there was inordinate delay in bringing the same, more than fifteen (15) years.

Mr. Akango further submitted that if the amendment of the plaint was allowed it would take away from the defendant the defence under the **Law of Limitation of Actions**.

I have considered all the submissions that were made by both parties in this matter. On 18<sup>th</sup> November, 2003 a further amended plaint was filed subsequent to a consent order that was entered into by the advocates for the parties herein. In that further amended plaint, the plaintiff sought a declaration that he was entitled to terminal benefits and in particular claimed payment in respect of leave accrued, leave days, 3 months pay in lieu of notice, pension, service salary award, half salary for one year interdiction, house allowance and salary arrears. The respective sums on account of the above claims were however not quantified. In the proposed further amendment to the plaint, the applicant wishes to state the specific sums that he is claiming in respect of the aforesaid heads of terminal benefits. The only additional claim that is sought to be introduced is on account of lumpsum pension.

There is nothing to indicate that the plaintiff's application is made in bad faith and neither do I agree that the proposed amendments are merely an afterthought. It is trite law that amendments to pleadings can be allowed at any time before delivery of a judgment. If an amendment is necessary for the purpose of raising and determining the real issues in controversy it ought to be allowed. The respondent had already consented to all but one of the claims which are intended to be stated in a quantified form and I do not see what prejudice would be occasioned to the respondent by the proposed further amendment to the plaint. It has also not been demonstrated by the respondent that the proposed further amendment has the effect of starting the matter *de novo*. The applicant is yet to complete his examination in chief and the respondent will be entitled to cross-examine him on all the issues that he will raise. I am persuaded that the interests of justice will be better served by granting leave to the applicant to file the further amended plaint than would be the case if such leave is denied. I therefore allow the plaintiff/applicant to further amend his plaint in terms of the draft that is annexed to his supporting affidavit. The applicant will however pay such additional court fees as will be assessed to be appropriate. He will also bear the costs of this application. The further amended plaint should be filed and served within the next fifteen (15) days from the date hereof. Thereafter the respondent shall be at liberty to file an amended defence.

DATED, SIGNED and DELIVERED at Nakuru this 22<sup>nd</sup> day of June 2006.

**D. MUSINGA**

JUDGE

Ruling delivered in open court in the presence of Miss Owenga for the plaintiff and Mr. Akango holding brief for Mr. Hassan for the defendant.

**D. MUSINGA**

JUDGE