

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)

Civil Case 715 of 2003

ROSE MUNYASA AND PHILEMON

**CHABWANGA (Suing as administrators of the estate of) ANJELINE
CHABWANGA.....APPLICANT**

VERSUS

**BARCLAYS BANK OF KENYA
LTD.....**

DEFENDANT

RULING

By this Chamber Summons expressed to be brought under Order VIA Rule 3(1) 5(1) and 9 and Order 1 Rule 10 (2) and 22 of the Civil Procedure Act the plaintiff seek orders:

- a) That DAPHTON KIROMBO be joined as a defendant in this suit.
- b) That this Honourable Court be pleased to grant leave to the plaintiff/applicants to amend the plaint herein dated 23rd June 2003, in terms of the draft **amended** plaint annexed to the affidavit in support hereof .
- c) That the draft amended plaint to be duly filed on payment by the plaintiffs/applicants of requisite court fees.
- d) That the costs of this application be costs in the main suit.

The application is supported by an affidavit sworn by ROSE MUNYASA one of the administrators of the estate of ANJELINE CHABVWANGA who avers that the amendments proposed to be made to the plaint herein dated 23rd June 2003 are crucially necessary to bring out all the issues in controversy and to enable the court to deal therewith finally.

The defendant was served with this application but he did not file any papers in opposition.

The object of amendment of pleadings is to enable the parties to alter their pleadings so as to ensure that the litigation between the parties is conducted not on false hypothesis of the facts already pleaded or the relief of the remedy already claimed but rather on the basis of true state of facts or the relief or the remedy which the parties really and finally intend to rely or to claim. The powers of amendment are intended to make more effective the function of the court to determine the true substantive merits of the case to have more regard to substance than to form and thus to free the parties and the court from the technicalities or formalities of procedure.

I am satisfied that there is enough material before me to enable me to exercise my discretion to allow the application in terms of prayers (a) (b) (c) and (d) of the Chamber Summons dated 9th July 2003.

Dated and delivered at Nairobi this 17th day of July 2006.

J.L.A. OSIEMO

JUDGE