

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (MILIMANI COMMERCIAL COURTS)

Civil Suit 451 of 2005

INVESTMENTS & MORTGAGES BANK LIMITEDPLAINTIFF

VERSUS

COSMO MILLERS LIMITED.....1ST DEFENDANT

KENYA MILLERS LIMITED.....2ND DEFENDANT

RAJNIKANT VELJI SHAH3RD DEFENDANT

ARVIND VELJI SHAH.....4TH DEFENDANT

MILANKUMAR VELJI SHAH.....5TH DEFENDANT

R U L I N G

This is an application by the Plaintiff under Order 1, rule 10 of the Civil Procedure Rules for joinder of one FORWARD INVESTMENTS LIMITED as a defendant herein. The application is brought upon the ground that the said Forward Investments Limited is a necessary party in order to enable the court to effectually and completely adjudicate upon and settle all questions involved in the suit because it executed a guarantee, like the 2nd, 3rd, 4th and 5th Defendants, undertaking to repay to the Plaintiff on demand all loan monies due from the 1st Defendant who was the borrower. It is pleaded that its name was omitted from the suit by inadvertence.

The only point taken by the 1st, 4th and 5th Defendants in opposing the application is that the same is incomplete because the orders sought, even if granted, will not enable the Plaintiff to file an amended plaint as no leave has been sought in that regard. The 2nd and 3rd Defendants have not filed any papers in response to the application. I think, with respect, that the point taken is misconceived. Amendment of the plaint is, under sub-rule (4) of rule 10 of Order 1, a necessary consequence of the addition or substitution of a defendant. That sub-rule reads:-

“Where a defendant is added or substituted, the plaint shall, unless the court otherwise directs, be amended in such manner as may be necessary, and amended copies of the summons and of the plaint shall be served on the new defendant and, if the court thinks fit, on the original defendants.”

Having sought addition of a defendant, the plaint must be automatically amended, should the order for addition be granted. The Plaintiff thus need not have sought an order to amend the plaint.

That being the case, and as it has not been argued that Forward Investments Limited is not a necessary party, I must allow this application. Forward Investments Limited is hereby added as the 6th Defendant in the suit. The Plaintiff shall within seven (7) days of delivery of this ruling amend the plaint as required by sub-rule (4) of rule 1 aforesaid. It shall serve the amended plaint together with amended summons upon the 6th Defendant within a further fourteen (14) days from the date of filing of the amended plaint. The Plaintiff shall also serve upon the other defendants copies of the amended plaint. The 6th Defendant may enter appearance and file defence as provided by the rules. The other defendants may file amended

defences within fourteen (14) days of service upon them of the amended plaint. There shall be no orders as to costs of this application. Orders accordingly.

DATED AND SIGNED AT NAIROBI THIS 5TH DAY OF DECEMBER, 2006.

H.P.G. WAWERU

JUDGE

DELIVERED THIS 8TH DAY OF DECEMBER, 2006.