

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

COMMERCIAL DIVISION, MILIMANI

CIVIL CASE NO. 377 OF 2004

CATHERINE REBA MUYUNZU.....PLAINTIFF

VERSUS

BLUE SHIELD INSURANCE COMPANY LTD.....DEFENDANT

R U L I N G

It is evident from the original plaint dated 9th June, 2004 and the amended plaint dated 3rd August, 2004 that the suit intended herein by the Plaintiff is a declaratory suit to compel the Defendant to satisfy the decree in Nakuru CMCC No. 640”B” of 2001 under the relevant provisions of the Insurance (Motor Vehicles Third Party Risks) Act, Cap. 405. Unfortunately the original and amended plaints were poorly drafted and the Plaintiff sought the main relief of special damages for the very sums that she already had judgment for in the Nakuru suit, instead of seeking an appropriate declaration. Her legal advisers have become wiser, and she has now sought by chamber summons dated 28.1.2005 leave to further amend her plaint in order to seek, as the first prayer, the relief of an appropriate declaration. It is to be noted that the application has been filed without delay as the pleadings have not even closed, though leave is required as the Plaintiff has once before amended the plaint without leave. The supporting affidavit is sworn by the Plaintiff’s advocate who has deponed to the necessity of the amendment sought.

The application is opposed by the Defendant upon the grounds that it is unmerited as it seeks to change the entire character of the suit; that the intended amendment is wrong in law as it seeks to cure an incurably defective plaint; that the prayer sought cannot be granted without the necessity for yet further amendment; and that the amendment is sought late in the day and is otherwise an abuse of the process of the court. These are the grounds stated in the grounds of opposition dated 9th February, 2005.

I have considered the submissions of the learned counsels appearing. I have also read the cases cited. As I recall the guiding principle is that amendment of pleadings will be liberally granted subject to the dictates of justice. An amendment which will facilitate the court to determine the real question in controversy between the parties will usually be allowed, and where no prejudice will be occasioned to the opposite side, say, by introduction of a cause of action that may otherwise be statute-barred, the court will normally permit a party to plead as it might deem fit.

Applying the above principles to this case I hold the view that the further amendment sought is necessary in order to determine the real issue between the parties. Nor will the amendment occasion injustice or prejudice to the Defendant. It will not introduce a fresh cause of action, nor will it change the character of the suit. The plea that the further amendment seeks to cure an incurably defective suit rings hollow as there is no application to strike out the suit. I will in the circumstances allow the application in prayer 1. The Plaintiff may file a further amended plaint within fourteen (14) days of today. The Defendant may file an amended defence within fourteen (14) days of service upon it of the further amended plaint.

The Defendant shall have the costs of this application. Orders accordingly.

DATED AND SIGNED AT NAIROBI THIS 19TH DAY OF APRIL, 2005.

H.P.G. WAWERU

JUDGE

DELIVERED THIS 22ND DAY OF APRIL, 2005.