

- Civil Practice and Procedure**
- **Application for amendment of pleadings under O 6A Rule 3**
 - **What consideration ought the court to have in mind?**

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL DIVISION MILIMANI

Civil Case 926 of 2002

GLOBAL GASES KENYA LIMITEDPLAINTIFF

VERSUS

KENYA POWER & LIGHTING COMPANY LTD.....DEFENDANT

R U L I N G

The plaintiff by its application dated 13th January 2005 seeks an order to amend the plaint in terms of the draft-amended plaint annexed thereof.

The plaintiff has come under Order VIA Rule 3 and 8 of the Civil Procedure Rules.

The plaintiff filed a suit-seeking injunction to restrain the defendant from disconnecting or interfering with electricity supply to the plaintiff's property. The plaintiff since filing the plain vacated its former premises and now resides at L.R. No. 209/108822/4,5 and 6 along Mombasa Road. The plaintiff by the present application seeks to amend the plaint so that it can include its present residence. In its ground plaintiff state; **“That it is important the plaintiff discloses the plaintiff's new location as the plaintiff is apprehensive that the defendant may disconnect the electricity supply at the plaintiffs current premises known as L.R. No. 209/10882/4, 5 and 6 along Mombasa Road.”**

The application was opposed on the basis that the plaintiff had not laid a basis for the amendment sought since it had failed to demonstrate that there is a real threat of disconnection of electricity at its new premises. It was contended on behalf of the defendant that the plaintiff should have annexed evidence of threat to disconnect such a demand letter. Defence learned counsel also argued that the plaintiff had separate power supply agreement, for the two premises, which were two separate contract's Defence relied on the case HCCC NO. 739 of 2003 where the court found that when an amendment is sought the court ought to consider **“whether the amendment sought are necessary to enable the court to ventilate the real issues between the parties.”** In this regard defence counsel requested the court to look at the draft-amended plaint and to note that the plaintiff had not amended the prayer but had only included the new premises.

I have considered the submissions made before me. Order VI A Rule 3 clearly provides that an amendment may be allowed at any stage in the proceedings before judgment and on such terms as to costs. The court is afforded discretion in this regard having in mind to do justice between the parties. The liberal principle which ought to guide the court in the exercise of this discretion is that an amendment should be allowed to avoid multiplicity of proceedings. An amendment, such as the one sought here by the plaintiff, which does not alter the character of the action ought to be readily granted so long as such amendment will not cause, the defendant, injunctice which cannot be compensated by costs. I have looked at the draft-amended plaint and I have noted that the plaintiff even before the proposed amendment had sought injunction to restrain the defendant form interfering with its electricity supply at its premises. It had not specified the specific premises but now seeks to so specify by indicating the

former premises and the current premises. I find that the proposed amendment will assist the court to adjudicate on the real question in controversy between the parties. I do not believe the application made has been motivated by Malafide and non was suggested by the defendant. The application is merited and in exercise of my discretion I grant the following prayers: -

(1) That the plaintiff is granted leave to amend its plaint in terms of the draft annexed to the application dated 13th January 2005.

(2) The plaintiff shall file and serve such amended plain within seven days from this date hereof; the defendant is granted leave within 14 days of service of such amended plaint to file a reply if need be.

(3) That the costs of the application dated 13th January 2005 are awarded to the defendant in any event.

Dated and delivered at Nairobi this 25th July 2005.

MARY KASANGO

JUDGE