

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

Civil Suit 50 of 1998

WELSA BANGE OGANDA PLAINTIFF

- Versus -

1. INDUSTRIAL COMMERCIAL DEV. COR

2. COAST PROFESSIONAL FREIGHTERS LTD.

3. NADHIA LIMITED

4. ATTORNEY GENERAL DEFENDANTS

RULING

This is an application for leave to further amend the plaint. It is argued for the plaintiff that the proposed amendment is intended to bring out facts on the matters in issue and that no prejudice will be caused to the defendants.

Mr. Munyithya appearing for the second and third defendants and holding brief for M/s Kamau Kania & Co. Advocates for the first defendant contended that the application is incompetent and bad in law as the first amendment was done without leave. Counsel further argued that the proposed amendment is argumentative and is like a written submission and that it introduces a new cause of action which will cause prejudice to the second defendant. Opposing the application on behalf of the fourth defendant, Mr. Okello argued that the application is not made in good faith and that the plaintiff has been indolent. Basing his argument on the Court of Appeal decision in Joseph Ochieng & Others Vs First National Bank of **Chicago Civil Appeal No. 149 of 1991** Mr. Okello further argued that if the application is allowed it will deny the fourth defendant the right to plead limitation.

I have considered these submissions along with the proposed amendment. Whereas I agree with Mr. Munyithya that the proposed amendment appears argumentative and repetitive, I nevertheless find that the plaintiff has a point he wishes to bring out if only he can avoid that and draft the further amended plaint a little more intelligibly. Other than pleading particulars of fraud the proposed amendment does not introduce a new cause of action as argued by Mr. Okello. I therefore allow the application and grant the plaintiff leave to further amend his plaint not as per the draft annexed to the supporting affidavit but, bearing in mind the provisions of Order 6 Rule 3(1), as I have said, to redraft it more intelligibly and avoid repetition. Costs of the application shall be costs in cause.

DATED and delivered this 20th day of May 2005.

D.K. MARAGA

JUDGE