

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Civil Case 1736 of 1993

NYAMODI OCHIENG NYAMOGO.....PLAINTIFF

VERSUS

KENYA POSTS & TELECOMMUNICATIONS CORPORATION...DEFENDANT

RULING

This suit came up for hearing today but before it started Mr. Nyamogo, counsel for the plaintiff applied orally under Order VIA Rule 8 for leave to amend the pleadings to include a definite figure of special damages of Shs.11,803,249/= which was not included.

Mr. Kipkorir counsel for the defendant opposed the application and submitted that the power of the court to amend pleadings is donated by Order VIA of the Civil Procedure Rules. The rule provides that there shall be a formal application but in any event the court has power to hear an oral application. He submitted that the plaintiff has made 5 previous substantial amendments to the pleadings and the amendment sought introduces a huge definite figure of Shs.11,803,249/=.

Secondly because the amount for special damages were specifically stated the filing fees was only Shs.6,000/= but with the definite figure included, the filing fees could have been over Shs.70,000/= which was not paid.

Thirdly he only had instructions from his client to defend the suit as itthat the amendment is introducing a colossal figure of over Shs.11 million, he needs to have further instructions from his client.

In reply Mr. Nyamogo submitted that amendments to pleadings can be effected at any stage and his client is willing to pay the balance of the required court fees immediately. It is a legal requirement that special damages ought to be pleaded and proved. Only minor amendments are required to be sought orally before the start of the hearing but not when the plaintiff intends to introduce special damages to the tune of over Shs.11 million. This would require a formal application as the same would require exchange of documents necessary to prove special damages and the defence counsel will need time for consultation and further instructions.

For the above reasons, application for leave to amend pleadings orally is rejected. The plaintiff should make a formal application for leave to amend this pleadings.

Dated this 21st day of July 2005.

J.L.A. OSIEMO

JUDGE