



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

**Civil Case 998 of 2002**

**MOBIL OIL KENYA LIMITED.....PLAINTIFF**

**VERSUS**

**JOHN KHAMIS SHABAAN .....DEFENDANT**

**R U L I N G**

The defendant by his chamber summons dated 16th June 2005, seeks leave to amend his defence in terms of annexed draft.

It was argued for the defendant that the proposed amendments are necessary to assist the court to determine the matters in issue., the defendant deponed that at the time of filing the suit he was working out of Nairobi and that he had misplaced the documents relating to this matter and was therefore unable to instruct his counsel fully. Defence relied on the cases

(1) THE BRITISH INDIA GENERAL INSURANCE CO. LTD – VERSUS – G

. M PARMAR AND CO. [1966] E A 172, where the court held: -

**“...the principle that the courts will freely allow an amendment to pleadings before the hearing if it can be done without injustice to the other side.....”**

And the other case was; EASTERN BAKERY – VERSUS – CASTELINO [1958] EA 461, where it was held:

**“Amendment to pleadings sought before the hearing should be freely allowed if they can be made without injustice to the other side, and there is no injustice if the other side can be compensated by costs.”**

The application was opposed. Plaintiff’s counsel submitted that if the amendment is allowed, it will cause further delay in this case, and consequently injustice. He referred to the amendments sought, and said that the amendment sought related to material facts, of events that have not yet taken place, that the amendments were pleading to events which are anticipate, or expected to take place. Counsel referred to paragraph 5 (e), which state: -

**“The balance of kshs 328, 087. 75 be recovered from the already commenced sale of the defendant’s plot Kilifi L.R. NO. 5054/1450 referred to in paragraph 5a with a proper account being rendered by the plaintiff.”**

Plaintiff counsel said that there is no certainty that the sale mentioned therefore will take place.

I have considered the submissions and the affidavits and of course the cited authorities. Indeed, amendments are freely allowed before judgment, subject to no prejudice being suffered by the other party, which cannot be compensated with costs. I have considered the amendments sought, and there are only three paragraphs that relate to future events which I believe would be prejudicial to the plaintiff. Indeed if those paragraphs were to be allowed as requested one would wonder what reply the plaintiff could put in, when indeed those events are yet to happen. The other proposed amendments are acceptable; I find no prejudice can be suffered by the plaintiff.

The orders of this court are as follows:

**(1) That the defendant is granted leave to amend his defence in accordance with the proposed amended defence excluding paragraph 5a, 5c and 5e.**

**(2) That the costs of the application dated 16th June 2005 are awarded to the plaintiff in any event.**

Dated and delivered this 22nd August 2005.

**MARY KASANGO**

**JUDGE**