



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT ELDORET**

**CIVIL CASE NO. 148 OF 2000**

**JACKSON KIPROTICH KIBOR ..... PLAINTIFF**

**VERSUS**

**BARCLAYS BANK (K) LIMITED ..... DEFENDANT**

**RULING**

This is an application for leave to amend plaint brought by way of Chamber Summons dated 17th November 2003. The application was heard on 25th March 2004.

At the hearing of the application, Mr. Katwa for the applicant submitted that they wanted to amend plaint by removing the name of Jackson Kibor and substituting it with Chelemei Limited. Also the pleadings in the plaint relating to negligence and special damages are to be amended. He submitted that the errors were done by the previous advocates. He also submitted that the amendment will enable the court to determined the issues in controversy. He relied on the case of **Shabbir Esmail Vs. Kenya Duty Free Complex Nairobi HCCC. No.3137 of 1992**, that the power to allow amendment of pleadings is a discretionary power of the court. The case has also not proceeded for hearing. He submitted that the amendment is meant to assist the court to appreciate the issues and it cannot be done without leave. There was also no injury that would be caused to the defendant. Mr. Shivaji for the respondent opposed the application. He submitted that the plaintiff in the Chamber Summons is a stranger to the proceedings. He also submitted that though the intended plaintiff is Chemelei Limited, the contents of the plaint as read in its entirety do not relate to Chemelei Limited as the plaint continues to refer to a person as "he". Also the verifying affidavit does not purport to be sworn by a director of a company. At the same time the plaintiff who is to be brought in does not have an account with the defendant and therefore cannot claim to agitate this suit. He therefore submitted that there is no material brought before this court to enable the court exercise its discretion in favour of the plaintiff.

Having considered the application and the submissions of both Counsels, I am persuaded to exercise my discretion to grant leave. The objections raised by the respondent can be taken at the hearing and, to me, there is no prejudice that is caused to the respondent by the proposed amendments. I therefore, grant orders as requested in the Chamber Summons dated 17th November 2003.

**Dated and delivered at Eldoret this .....Day of ..... 2004**

**George Dulu**

**Judge**