



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI COMMERCIAL COURTS
CIVIL CASE NO.705 OF 2003

PHYLLIS WANGECHI GITONGA :::::::::::::::::::::::::::::::::::PLAINTIFF

VERSUS

CHARTERHOUSE BANK LIMITED :::::::::::::::::::::::::::::::::::DEFENDANT

RULING

This is an application expressed to be brought under the provisions of Order VIA Rule 3 of the Civil Procedure Rules and Section 3A of the Civil Procedure Act Cap.21 of the Laws of Kenya. The Plaintiff is the Applicant and seeks leave to amend her Plaint. The reasons for the application are that the Plaint was filed in a hurry and material particulars were omitted and that the amendment is necessary for the determination of the real question in controversy between the parties. It is further alleged that the Defendant shall not suffer any prejudice if the amendment is granted. The application is supported by an affidavit sworn by the Plaintiff. The application is opposed and the Defendant has filed Grounds of Opposition and a Replying Affidavit.

In support of the application Counsel for the Plaintiff argued that the proposed amendment will ensure that all issues in dispute between the parties are dealt with at once. Counsel emphasized that the Defendant shall suffer no prejudice and as the application has been made without delay the same should be allowed.

In opposition to the Plaintiff's application, Counsel for the Defendants submitted that the proposed amendment is an exercise in futility and the application has been overtaken by events as the prayers sought in the proposed amended plaint have been satisfied. In Counsel's view the application is merely intended to delay the sale of the suit premises.

With respect the reasons advanced in opposition of the application for leave to amend cannot defeat the present application. The Defendant has not demonstrated any real prejudice it will suffer if the application is granted. The argument that the application is intended to delay sale of the suit premises is without basis as the issue of injunction was dealt with by Mwera J. on 25th November, 2003.

It is now settled that amendments may be allowed at any time before judgment provided that the damage which may arise as a result of the amendments can be cured by way of costs. The Defendant has not shown that if leave to amend is granted, it will cause injustice to the Defendant or it will be injurious to it or that any injury or damage will not be cured by an award of costs.

In the result, it is my view that this is a case where leave sought ought to be allowed for the purposes of finally determining the real issues in dispute between the parties to these proceedings. The Plaintiff's application is therefore allowed in terms of prayer 1 and 2. The Defendant is granted leave to file an amended defence if necessary within the next ten (10) days. The Defendant shall have the costs of this application. It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 8TH DAY OF JULY 2004.

F. AZANGALALA

AG. JUDGE

Read in the presence of: