



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

CIVIL SUIT NO. 398 OF 2002

MAGANLAL NANJIBHAI SAVANI.....PLAINTIFF

-VERSUS-

1. KENYA TEXTILE CO. LTD.

2. MUNICIPAL COUNCIL OF MOMBASA.....DEFENDANTS

R U L I N G

The plaintiff seeks to amend his plaint and the amended chamber summons dated 27.11.2002 to add a third Defendant known as Osman Mohammed Haji. The Chamber Summons is brought under Order 1 rule 10 and order VIA rule 3 and 5, order V rule 17 of the Civil Procedure rules and Section 3A of the Civil Procedure Act. The application is supported by the affidavit of Kamrudeen Ali Mohamed Kasmani sworn on 27th November 2002.

The main grounds advanced by the applicant are that the intended 3rd Defendant is a tenant to the suit premises and that he is a necessary party in the suit. Finally that he came to know the intended 3rd Defendant through the 1st defendant's pleadings and affidavits. The application was strenuously opposed by the Respondents on the grounds that it would delay and embarrass the process of this court.

It should be noted that under Order 1 rule 10 of the Civil Procedure Rules the court is given wide powers to allow an application for amendment. I have perused the affidavit of Chunilal Savani sworn on 12th November 2002 and in particular paragraph 15 and the annexure marked 'B' which is a lease document duly executed on 18.6.2002 and it would appear the same was not registered. Perhaps this could explain the difficulty in which the plaintiff had in establishing the status of the intended 3rd defendant. The suit premises is apparently occupied by the intended 3rd Defendant and therefore any dispute concerning the suit premises cannot be dealt with without the involvement of the intended 3rd Defendant. It is my considered view that the presence before this court of the intended 3rd Defendant is a necessary party in order for this court to effectually and completely adjudicate upon and settle all the questions involved in this suit.

The amendment will not prejudice any of the parties but it would instead enable this court to gather all

the necessary information to arbitrate over the issues in controversy. In the circumstances therefore I grant the plaintiff leave to add Osman Mohamed Haji as a 3rd Defendant. The plaint and the amended chamber summons dated 27.11.2002 should be amended within ten (10) days from the date of this order. The Defendants are also given leave to amend and file their amended defences and reply if any within seven (7) days upon service of the amended plaint and the amended chamber summons. The firm of Balala & Company Advocates are directed to assist to serve the amended plaint and the amended chamber summons upon the intended 3rd Defendant.

Costs of this application should be costs in the cause.

Dated at Mombasa this 4rd day of April, 2003.

J.K. SERGON

J U D G E