

IN THE REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL CASE NO. 1736 OF 1993

NYAMODI OCHIENG NYAMOGO.....PLAINTIFF

V E R S U S

THE KENYA POSTS & TELECOMMUNICATIONS

CORPORATION.....DEFENDANT

R U L I N G

It is common ground here that there are filed in this case four variations of a plaint. There is the original plaint dated 13.4.93 then an amended one dated 3.4.97 then amended plaint dated 29.2.2000 then amended, amended, amended plaint dated 21.3.2003.

Mr. Kipkorir for Defendant has objected to this amended plaint saying all the subsequent amendments within their variations of colourings ought to be shown in a form of rainbow colouration with the initial amendment retaining the red hue. But Mr. Nyamogo for the Plaintiff opposes this application saying that the amendment complies with Order 6A Rule 7(2)(3) of the Civil Procedure Rules. This says that all amendments shall be shown by striking out in red ink all deleted words but in such a manner as to leave them legible and in underlying in red ink all added words but as per Order 6A Rule 7(3) colours other than red ink shall be used for further amendments to the same document.

This to me means that subsequent amendments must be struck off in the subsequent shade of colour used but in such a manner in this rule omission of the previously amended words. I think where there are many rainbow colours caused by red amendments to the document and where there is fear it might cause confusion, Court's order may be sought. HALSBURY'S LAWS OF ENGLAND 4TH EDITION VOL. 36 PAGE 48-49 says that: -

“where the amendments are numerous or of such nature or length that to make written alterations of the document so as to give effect to them would make it difficult or inconvenient to read, a fresh document must be prepared incorporating the amendment.”

The purpose of pleading is clarity. To make the opposite party know what case is against him. He should not be made to indulge in guesses as to what was or was not pleaded or ought to have been pleaded or was originally or not originally pleaded the purpose of pleading is not to play a game at the expense of the litigant; (quote Order 18 RSC 1997 page 290 commentary)

The obvious interpretation of Order 6A Rule 7(2) is that shades of colour must be used and omitting to do so is a contravention. Instead of striking off the amendment I order that same be withdrawn and properly shaded one be filed and served in 7 days. Meanwhile there be costs to the Applicant.

READ this 8th day of May 2003.

A. I. HAYANGA

JUDGE

To –

Mr. Nyamogo for Plaintiff

Mr. Issa for Defendant

8.5.2003