

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI COMMERCIAL COURTS

CIVIL CASE NO. 1364 OF 2001

PETER N. NG'ANG'A PLAINTIFF

VERSUS

STANDARD CHARTERED BANK (K) LTD

HARRISON MAINA KARIUKI) DEFENDANTS

R U L I N G

This is an application by way of chamber summons in which the Applicant is seeking leave to be granted to him to amend the Plaint and have leave to join one person Kezia Wanjiku Ng'ang'a as co-Plaintiff and two other persons M/S Amolo & Gachoka, Advocates and M/s Dolpin Auctioneers as co-Defendants. He is also seeking leave to amend chamber summons dated 3rd September 2001. The grounds are that joinder of additional parties is necessary for determination of the real question in controversy and amendment of the Plaint is required to correct the defects and/or insufficiency of pleadings and clarify the cause of action. There is an affidavit in support of the same application.

The First Respondent opposed the application stating that the application is incompetent and does not lie under the provisions of the Civil Procedure Act; that the draft amended Plaint does not raise any reasonable cause of action against the 3rd & 4th Defendants sought to be joined; that the amendment will not assist the court in determining the real questions in dispute, that the application is a ploy by the Plaintiff to circumvent the First Defendant's notice of preliminary objection dated 28th September 2001 and that the application is frivolous, vexatious and an abuse of the court process.

Judgment has not been entered in this suit, and the suit has not been set down for hearing. The law is clear that amendments before the hearing should be freely granted where there is no prejudice to the other party and there would be no prejudice if the other party can be compensated by way of costs. I have perused the affidavit in support of this application the which Affidavit has not been challenged. I do find that the amendments are necessary in this matter. It is true that the annexed draft amended Plaint does not comply with Order 6A Rule 7(2) but that rule deals with court documents which are duly and legally filed into the court and are to be acted upon as authentic court documents. Here all I have is a draft amendment which was merely meant to show what form the amendment is to take. Once leave is allowed a properly amended Plaint will be filed. If the properly amended Plaint will have not demonstrated any cause of action against any or all parties then such parties will be at liberty to apply to have the same struck out or dismissed. This will also be the case in case the firm of Amolo & Gachoka are not properly sued.

I do allow the amendment to the Plaint but direct that the amended Plaint be filed into the court and served within Ten days of the date hereof. Second Defendant to amend his Defence within 10 (ten) days of the date of service upon him of the amended Plaint.

As to chamber summons dated 3rd September 2001, no proper grounds have been advanced for seeking its amendments and no attempt has been made to indicate what amendments are required in the draft annexed to the application. It will not be amended. The Applicant can file a fresh application if that is necessary because of the amendments of the Plaint. I am also wondering whether there is anything in our Civil Procedure rules called "interim injunction" but that is not mine to decide now.

The application to amend chamber summons dated 3rd September 2001 is refused.

The Respondent will have the cost of the entire application. Orders accordingly.

Dated at Nairobi this 16th day of January 2002.

ONYANGO OTIENO

JUDGE