

IN THE REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL CASE NO.1070 OF 1997

LESLIE SRINGER:::::::::::::::::::::::::::::1ST PLAINTIFF

STANLEY JONES :::::::::::::::::::::::2ND PLAINTIFF

JOAN JONES :::::::::::::::::::::::3RD PLAINTIFF

V E R S U S

HASSAN S. ISMAIL :::::::::::::::1ST DEFENDANT

ALI SHARIF ISMAIL:::::::::::::2ND DEFENDANT

R U L I N G

This is an application by the defendants for leave to amend the defence made under Order 6A Rr 3, 4 and 5 of the Civil Procedure Rules and Section 3A of the Act supporting affidavit by GODFREY JOSIAH LANGI sworn on 4/2/97 and states that having obtained leave to issue 3rd party notice on 31-7-98 and that has necessitated the amendment of the statement of defence to enable court to rightly and conveniently adjudicate on liability.

In reply Mr. Peter Le Pelley counsel for plaintiff has filed his replying affidavit on 25-11-2001 in which he denies that these amendments are necessary at all.

I have heard the learned counsel on this application and looked at the defence annexed and I see that there is no reason to refuse leave to amend.

In principle this court has wide powers under Order 6A of the Civil Procedure Rules to allow any amendment to the pleadings as may be necessary for the purpose of determining the real questions in controversy between the parties, either on application of any of the parties or its own motion. Amendment can be at any stage of the proceedings and the one outstanding bar towards the unfettered discretion is that if the amendment is allowed will cause grave injustice to the opposite party.

The reasons given by the plaintiffs in opposition to this application show no consequential injustice if this is allowed.

I therefore allow the application and order that New and Fresh amended statement of defence be filed and served in 7 days of this order and the plaintiff to have 7 days to file and serve any amended reply to it if necessary. Cost of the application to be cost in the cause.

Dated this 29th day of April 2002

A. I. HAYANGA

J U D G E

Read to Mrs Kirima for plaintiff

N/A for defendant

A. I. HAYANGA

JUDGE