



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA AT NAIROBI  
MILIMANI COMMERCIAL COURTS  
CIVIL CASE NO.2811 OF 1995**

**KENYA PROJECTS & INVESTMENTS LIMITED.....PLAINTIFF  
VERSUS  
KENYA POST OFFICE SAVINGS BANK.....1ST DEFENDANT  
KENYA POST OFFICE SAVINGS BANK RETIREMENT BENEFIT  
SCHEME.....2ND DEFENDANT  
THE COMMISSIONER OF LANDS.....3RD DEFENDANT**

**RULING**

The Re-amended Plaintiff was admittedly filed without leave of the court. The Plaintiff had amended his Plaintiff once under Order 6A rule 1 of the Civil Procedure Rules and could not amend the Plaintiff further without leave of the act. The Plaintiff admits this freely. It however concedes that the mistake is curable by allowing it leave to file a re-amended Plaintiff and to that effect he is seeking that the present-amended Plaintiff should remain in the court records till he files such a re-amended Plaintiff. I have perused the authorities before me. The correct position as I understand it is that there is no re-amended Plaintiff validly before me as the law does not allow Plaintiff to file a re-amended Plaintiff or pleading without the leave of the court. I think the correct position is that the re-amended plaintiff in court file must be expunged from the court record.

That will meant hat the amended Plaintiff is what will be on record till the Plaintiff applies (if he applies and is granted leave to re-amend it. I say the amended Plaintiff will remain on the record because as there-amended Plaintiff is not validly before the court it could not have overtaken the amended Plaintiff and the re-amended Plaintiff cannot be said to be the one now on record as it is not a valid document. I do expunge from the record the Re-amended Plaintiff. The Plaintiff is at liberty to apply to have the present amended plaintiff re-amended if it so wishes. Costs of the Preliminary Objection to the respondents.

**Dated at Nairobi this 15th day of March 2001.**

ONYANGO OTIENO

**Judge**