

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI COMMERCIAL COURTS
CIVIL CASE NO. 2026 OF 2000

MWIHANGIRI FARMERS LTD. PLAINTIFF
VERSUS
ECUMEMICAL DEVELOPMENT
CO-OPERATIVE SOCIETY (E.D.C.S.) U A DEFENDANT

RULING

The plaintiff in this matter, Mwihangiri Farmers Limited has brought this application under S. 100 of the Civil Procedure Act and Order VIA Rules 3 and 8 of the Civil Procedure Rules for leave of this court to amend the plaint in the manner indicated in the draft amended plaint annexed to the application.

A perusal of the draft amended plaint shows that the effect of the amendment, apart from introducing a few minor amendments which in any case could have been effected through an oral application will be to add 24 new plaintiffs to the suit. As the heading of this chamber summons application shows that the application is made under Section 100 of the Civil Procedure Act and Order VIA Rules 3 and 8 of the Civil Procedure Rules.

Mr. Mwangi Gathuri for the defendant/respondent opposed the application on the ground that the provisions of the law under which the application has been made are not relevant in an application of this nature. I agree with that submission. In my view what the plaintiff is seeking to do is simply to add new parties to the suit. The provision of the Civil Procedure Rules which deals with that type of applications i.e. the substitution and addition of parties is Order 1 Rule 10 and not Order VIA Rules 3 and 8 of the Civil Procedure Rules. It is therefore clear that this application has been brought under the wrong provision of the law. It is for that reason incompetent and is accordingly struck out with costs.

Dated at Nairobi this 29th day of May, 2001.

T. MBALUTO
JUDGE