



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MOMBASA**

**CIVIL SUIT NO. 431 OF 2001**

**SHIRAZ SHABUDIN SAYANI ..... PLAINTIFF**

**VERSUS**

**MRS. I. RAJPUT ..... DEFENDANT**

**RULING**

By Chamber Summons dated 5th February 2001 the plaintiff in the main suit seeks to amend his  
plaint by inserting a paragraph pleading that there is no other suit with similar facts and circumstances  
pending in this or any other court.

Such pleading is now a mandatory requirement introduced in Order 7 r (e) Civil Procedure Rule by  
Legal Notice No. 36/2000. It is an additional requirement of the particulars to be contained in the plaint.  
The amendment is sought under O 6 A r 3 Civil Procedure Rules which donates to the court very wide  
powers in applications for leave to amend pleadings. Indeed it is conceded by learned counsel for the  
Defendant / Respondent Mr. Suchak that amendments to pleadings are freely granted so long as they  
cause no prejudice to the other side.

Mr. Suchak however opposes the application on the ground that the averment in the intended  
amendment is erroneous since there are other cases between the parties which are pending before the  
Resident Magistrates Court. He also submitted that the amended plaint was not accompanied by a  
verifying Affidavit and the application was therefore not properly before the court. On this I think Mr.  
Suchak is not right. As Mr. Sifuna, learned counsel for the Applicant correctly submitted, there is already  
a verifying Affidavit filed with the original plaint. In law any amendment to pleadings goes back to the  
original pleadings and I take it therefore that the original verifying Affidavit need not be duplicated as  
there are not two but one pleadings in the plaint even after the amendment.

As for the submission that the intended amendment is erroneous, I think once again that Mr. Suchak is  
putting the cart before the horse. The amendment is not yet part of the pleadings and it would be  
premature to strike it out before it is admitted in evidence. When it is admitted, it will then be an  
averment verified on oath and will need a formal application to strike out if the Defendant has evidence  
that it is false. I need not therefore at this stage consider the substantial submissions made on both sides  
on the merits or other wise of the intended amendment.

On the whole I see no valid reason for objecting to the amendment sought. I agree with Mr. Suchak  
however that the application could have been made earlier and that there is considerable delay. The  
original plaint was filed on 18th September 2000 while this application was filed on 20th March, 2001.  
The defence was placed on record on 25th October 2000. For that reason the Plaintiff / Applicant shall  
bear all costs thrown away and also costs of the application for amendment, all assessed at Kshs. 10,000/-.  
Subject to such payment the application is granted. The Amended plaint shall be filed and served within 7  
days.

**Dated this 12th day of July, 2001**

**PHILIP N. WAKI**

**JUDGE**