

REPUBLIC OF KENYA

HIGH COURT OF KENYA AT MACHAKOS

CIV CASE 47 OF 94

ROSEMARY MUGERWA V COACH SAFARIS LIMITED & ANOTHER

J W MWERA, JUDGE

MARCH 2, 2000

March 2, 2000 J W Mwera, Judge delivered the following ruling. This application falls under Order 1 rule 10(2) 6A rule 3 Civil procedure Rules and section 3A Civil Procedure Act. By it the plaintiff prays that she amend her plaint filed here on February 2, 1994. That when pleadings were initially drawn by Messrs Mbugua & Mbugua advocates Nairobi by error they indicated the deceased's salary per month as Kshs 2,630 while in fact he earned Kshs 6,000 per month as a receptionist with a firm called Ngilu & Associates.

Mr Mulu swore an affidavit in support to the effect that a letter from Messrs Ngilu & Associates had stated the latter sum and so it ought to be the basis of the trial herein. That was the main prayer besides the intended amendment to paragraph 1 of the plaint wherein the firm of Messrs L M Wambua & company advocates Machakos are shown to replace Messrs Mbugua & Mbugua advocates.

Mrs Mbugua who opposed this application did not appear to have a quarrel with this amendment to paragraph 1 but rightly pointed out and Mrs Kalinga readily admitted that an attempt to amend paragraph 7 of the plaint was not part of this application to amend and that there was irregularity even in that purported amendment that there was not the mandatory red underlining. That is quite right and at this point it should be ruled that the trial will proceed with the original paragraph 7 in the initial plaint dated June 6, 1993. Attention then focused on paragraph 6 of the plaint which was to be amended principally as regards the salary per month – from Kshs 2,630 to Kshs 6,000.

Mrs Mbugua posited that this was very late in the day because since the filing of the plaint, the change of advocates on July 20, 1995, and receipt of the letter dated February 9, 1996 (stating the Kshs 6,000 per month) the plaintiff's lawyer had done nothing to seek the amendment which they seek now about 4 to 5 years down the line. That in that slumber, they stayed until the hearing opened and the plaintiff was about to testify on the salary per month. The delay was not explained or justified.

Both sides were agreed that this court had wide jurisdiction under 06A to allow the sought amendment. It is not actually explained away why all this delay until the plaintiff climbed into the witness box for her lawyers to realize that the sum pleaded as salary per month was much less than Kshs 6,000 the deceased's former employer had stated. That sum is basic though. However this court is inclined to grant the desired amendment more for justice to be done in the case than that the delay to apply went unexplained. It is not too late in the trial. It had just opened. However the plaintiff will pay costs assessed at Kshs 3,000 to the defence for this application before judgment is delivered.

Amendment allowed on the stated condition.

Orders accordingly. Hearing may proceed.