



REPUBLIC OF KENYA
IN HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO. 761 OF 1988

1. **INTERCOM SERVICES LIMITED**
2. **INTERSTATE COMMUNICATIONS & SERVICES LTD**
3. **SWIFTAIR (K) LTD**
4. **KENYA CONTINENTAL HOTEL LTD**
5. **JAMES KANYITA NDERITU.....PLAINTIFFS**

VERSUS

STANDARD CHARTERED BANK LTD.....DEFENDANT

R U L I N G

This is yet another application by the plaintiffs for leave to amend the re-amended plaint on record. The application is opposed.

I have on record affidavits sworn on behalf of both parties and submissions by learned counsel. Some matters canvassed during the hearing have been addressed before when similar applications were presented. I need not recapitulate the known and established principles in such applications.

The essence of a good pleading is to give notice to the other party of the nature of the case to be faced during the trial. This applies equally to both the plaintiffs and defendant.

In determining the orders to be made in the present application, I am guided by Order 6 and 6A of the Civil Procedure Rules and the caselaw on the principles applicable. The underlining consideration however is that, the court shall endeavour to do justice to both parties without causing prejudice to any such parties.

The plaintiffs have called 12 witnesses so far and it is said the proposed amendments have been covered by the evidence so far adduced. The affidavit in support of the application has not specifically identified the said evidence. I am told from the bar that 3 more witnesses are yet to be called before the close of the plaintiffs' case.

It is submitted on behalf of the defendant inter alia that, not all the proposed amendments have been covered by the evidence adduced. The learned counsel for the defendant took the court through the proposed draft and identified the same. These, he submitted, would be prejudicial to the defendant.

The amendment order sought by the plaintiffs can be made at any stage of the proceedings. We have come a long way and I appreciate the concern raised by the learned counsel for the defendant.

However, I am inclined to allow the application while at the same time providing sufficient accommodation for the defendant so as to avoid room for any prejudice. In that regard I make the

following orders:

- (a) the application for amending the further re-amended plaint is hereby allowed.
- (b) the re-amended plaint shall be filed within 7 days of today.
- (c) The defendant has the right to request for further and better particulars if need be.
- (d) After service of the satisfactory answer to the request for particulars, the defendant shall file a defence to the further re-amended plaint within 7 days of such service.
- (f) The plaintiffs shall pay to the defendant all the costs occasioned by this application.

It is my hope that all the foregoing orders shall meet the ends of justice in respect of both parties. I must put the parties on notice however, that, in the event of more than half of the witnesses who have testified being recalled, this court may not be available to continue hearing this case. This is because I am engaged in murder trials on a daily basis and no time shall be available for this case in that event. If that be the case, counsel are advised to take directions under Order 17 Rule 10 of the Civil Procedure Rules and list the matter for hearing either before the Commercial Division or Civil cause list.

Orders accordingly.

Dated and delivered at Nairobi this 25th day of September, 2000

A. MBOGHOLI MSAGHA

JUDGE