



**Asman & 5 others v Asman & others (Commercial Case 010 of 2022)
[2023] KEHC 1218 (KLR) (9 February 2023) (Directions)**

Neutral citation: [2023] KEHC 1218 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL CASE 010 OF 2022
DO CHEPKWONY, J
FEBRUARY 9, 2023**

BETWEEN

MEDINA IBRAHIM ASMAN & 5 OTHERS PLAINTIFF

AND

SAID IBRAHIM ASMAN & OTHERS DEFENDANT

DIRECTIONS

1. On February 6, 2023 this matter was scheduled for mention to confirm whether the same could be certified ready for hearing. However, M/S Wanjiku, learned counsel appearing for the Plaintiffs sought for more time before the matter can be confirmed for hearing on account that the 4th Plaintiff was yet to be substituted since the process of obtaining the letters of representation was not yet complete.
2. The counsels for the Defendants opposed the request and indicated that the matter had been adjourned on several occasions on the same reason of seeking to substitute the 4th Plaintiff, which has not been done to date. They added that the Plaintiff's counsel has not shown any evidence of the alleged matters filed to obtain the letters of representation. Thus, the defendants craved for the matter to be certified ready for hearing notwithstanding the pending issue on substitution of the 4th Plaintiff.
3. Having listened to submissions by respective counsels for the parties, I am of the view that the right of substitution of a party touches on the jealously guarded right to fair hearing. Thus, unless a request for substitution oppresses the other parties or seeks to perpetuate a law suit that lacks bona fides, the same ought to be allowed so as to avert the risk of condemning a party unheard.
4. I have weighed the facts in this matter against the mentioned threshold and while bearing in mind the fact that there are ongoing proceedings for substitution of the 4th Plaintiff, I am persuaded that the request for more time to have the 4th Plaintiff substituted does not seek to oppress the other parties herein or in any way seek to perpetuate a case wanting of bona fides.



5. For that reason, I am inclined to allow the Plaintiff's advocate more time to pursue the substitution of the 4th Plaintiff but with timelines. The matter to be mentioned on for parties to confirm compliance and for the issue on whether to amend the Plaint can be addressed.

6 It is so ordered.

DIRECTIONS DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 9TH DAY OF FEBRUARY , 2023.

D. O. CHEPKWONY

JUDGE

In the presence of :

M/S Mohamed holding brief for Mr. Lakicha counsel for Plaintiffs

Mr. Kithinji counsel for 3rd Defendant

M/S Onsembe counsel for 6th Defendant and holding brief for M/S Makori For 5th Defendant

Mr. Omondi Owino counsel for 8th Defendant

Court Assistant - Sakina

