



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI COMMERCIAL & TAX DIVISION

CIVIL CASE NO. 439 OF 2016

ARENEN HOLDINGS LIMITEDPLAINTIFF

VERSUS

DIAMOND TRUST BANK KENYA LIMITED.....DEFENDANT

BY WAY OF COUNTERCLAIM

DIAMOND TRUST BANK OF KENYA.....PLAINTIFF

VERSUS

ARENEN HOLDINGS LIMITED.....DEFENDANT

RULING

1. By its Motion on Notice dated 31/8/2020, the plaintiff in the counterclaim (“the Bank”) has sought to further amend its Amended Statement of Defence and Counterclaim in terms of the draft annexed to the supporting affidavit.
2. In seeking to further amend its Amended Defence and Counterclaim, the bank sought to add two other parties as defendants to the counterclaim. These are **Rohit Mediratta** and **Vinod Guptan**, as the 2nd and 3rd defendants to the counterclaim, respectively.
3. The application was brought under **Order 1 Rule 10, Order 8 Rules 3, 5 and 8 and Order 51 of the Civil Procedure Rules and sections 1A, 1B, 3A and 100 of the Civil Procedure Act**. The grounds for the application were set out in the body of the Motion and the supporting affidavit of **Tarminder Umesh** sworn on 31/8/2020.
4. The grounds were that; this is a claim that revolve around a Hire Purchase facility (“the HP”) of Kshs. 41,200,000/- extended to the plaintiff by the bank for purchase of about 23 vehicles. That although the bank had previously been allowed to amend its defence and counterclaim against the plaintiff it had become necessary to further amend the defence and counterclaim and join those who had guaranteed the facility as the 2nd and 3rd defendant, respectively to the counterclaim.
5. It was contended that the joinder was necessary as it would enable the bank particularise its claim as the same arose from the same set of facts. That it would prevent multiplicity of suits and that it will not prejudice any of the parties.
6. Although the plaintiff had been given sufficient time to respond to the said application, it failed to do so. The application was therefore unopposed.
7. In **JMK v. MWM & Another [2015] Eklr**, the Court of Appeal held: -

“Order 1 Rule 10(2) of the Civil Procedure Rules empowers the court, at any stage of the proceedings, upon application by either party or suo moto, to order the name of a person who ought to have been joined or whose presence before the court is necessary to enable the court effectually and completely adjudicate upon and settle all questions involved in the suit, to be added as a party. Commenting on this provision, the learned authors of Sarkar’s Code of Civil Procedure (11th Ed. Reprint, 2011, Vol. 1 Pg 887), state that:

‘The section should be interpreted liberally and widely and should not be restricted merely to the parties involved in the suit, but

all persons necessary for a complete adjudication should be made parties”.

8. The foregoing are therefore the parameters within which a court considers joinder of parties. The same will therefore be applicable in the present case.

9. It was sworn that the suit emanates from a HP facility of Kshs. 41,200,000/- afforded to the plaintiff by the bank. That the said facility was guaranteed by the proposed 2nd and 3rd defendant to the counterclaim. It is therefore clear that any liability of the proposed parties to the bank is intricately inter-twined with the liability of the plaintiff to the bank.

10. The issues between the plaintiff and the bank is related to the set of facts that relate to the guarantee given by the proposed parties. In this regard, it would be a waste of the precious judicial time to require the bank to litigate separately with the proposed parties, yet the facts forming the subject matter between them and the bank arose from the same transaction with that between the bank and the plaintiff.

11. In this regard, the Court is satisfied that the proposed parties are necessary parties to enable the Court completely and effectually adjudicate this matter. The application is, in the premises, meritorious and is allowed as prayed.

It is so ordered.

DATED and **DELIVERED** at Nairobi this 8th day of April, 2021.

A. MABEYA, FCI Arb

JUDGE