



IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

COMMERCIAL AND TAX DIVISION

CORAM: D. S. MAJANJA J.

CIVIL CASE NO. 413 OF 2018

BETWEEN

AIR AFRIK AVIATION LIMITED.....PLAINTIFF

AND

STANBIC BANK KENYA LIMITED.....DEFENDANT

RULING

1. By the Notice of Motion dated 13th August 2020, the Plaintiff seeks to review an order made on 15th May 2020. A brief background of the matter will provide the context of the order.

2. The Defendant filed a Chamber Summons dated 11th March 2020 seeking leave to join the Bank of South Sudan as an additional Defendant to the suit and upon such joinder that leave be granted to the Defendant to serve process on the Bank of South Sudan by substituted service.

3. The application came up for hearing on 15th May 2020 and the parties recorded a consent order on the following terms:

1. *THAT the Applicant be and is hereby granted leave to join the Bank of South Sudan as a Defendant in this suit.*
2. *THAT upon joinder of the intended Defendant, leave be granted to the Applicant to effect service of process on the said Bank of South Sudan by substituted service through DHL.*
3. *THAT costs of this application be provided for.*

In addition to the consent, I did, *suo moto*, add further orders as follows:

4. *THAT the Central Bank of South Sudan be joined to the suit as the 2nd Defendants.*
5. *THAT the Plaintiff to file and serve the Amended Plaint within 30 days.*
6. *THAT costs be in the cause.*
7. *THAT the matter be mentioned on 14.07.2020 for further directions.*

8. The Plaintiff is now aggrieved by the *suo moto* orders on the grounds that it did not seek leave to amend the Plaint and that it has not made any claims against the Bank of South Sudan and that the order, in effect, compelled it to amend its Plaint against its wishes. The application is opposed by the Defendant on the ground that the court has power to order joinder of a party and direct amendment of a pleading under **Order 1 rule 10(2)** of the **Civil Procedure Rules** in order to ensure that matters are determined effectively. It added that the court having ordered joinder, the Plaint must necessarily reflect the fact of joinder by amendment hence the Plaintiff has not established any basis for review of the order.

9. The order for joinder of the additional Defendant was made on the basis of the Defendant's application and was allowed by consent of the

parties. The subsequent orders were made by the court *suo moto*. I agree with the Plaintiff that it did not seek to join or amend its pleading since it does not have a cause of action against the Bank of South Sudan. I am aware that the court has the jurisdiction to join any party if the joinder of such a party is necessary for the proper and efficacious determination of the dispute. This must, of course, be considered against the fact that the case belongs to the parties who have a right to determine how it is litigated.

10. I am satisfied that there is sufficient cause under **Order 45 rule 1** of the **Civil Procedure Rules** to review the order I made *suo moto*. The joinder of the new party will be reflected in pleadings filed subsequent to the consent order. The Plaintiff does unequivocally state that does not have any claim or cause of action against the Bank of South Sudan. It should not bear the burden of serving a party who the Defendant sought to join to the proceedings.

11. I therefore review the order made on 15th May 2020 by setting aside Orders 4, 5, and 6 of the said order. Since the order was made by the court on its own motion, there shall be no order as to costs.

DATED and DELIVERED at NAIROBI this 14th day of SEPTEMBER 2020.

D. S. MAJANJA

JUDGE

Mr Kangethe instructed by Kagwimi Kangethe and Company Advocates for the Plaintiff.

Ms Ogula instructed by Iseme Kamau and Maema Advocates for the Defendant