

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL SUIT NO. 161 OF 2012

RICHRD OMBUI..... PLAINTIFF

VERSUS

AMREF KENYA COUNTRY OFFICE.....1ST DEFENDANT

THE HON. ATTORNEY GENERAL2ND DEFENDANT

RULING

The plaintiff filed this suit against the defendant jointly and severally for damages for false imprisonment and or detention, malicious prosecution and defamation. There were also other prayers for exemplary and punitive damages, declaration that the plaintiff is entitled to salary arrears and resumption of duty with the 1st defendant , costs of defending a criminal case No. 491 of 2006, special damages and costs of the suit.

The defendants filed their respective defences but subsequently the plaintiff filed an amended plaint followed by the present application to further amend the plaint.

The present application is dated and filed on 25th of May, 2018 under Sections 1A, 1B, 3A and 63 of the Civil Procedure Act and Orders 8 Rules 3 and 8 and 51 of the Civil Procedure Rules. The reasons are set out in the body of the application and there is a supporting affidavit sworn by the advocate for the plaintiff.

The application is opposed and parties have filed their respective submissions.

I have gone through the cited provisions of law, the submissions by counsel on both sides and the cited authorities. I have also looked at the proposed amendment in relation to the original pleading and the first amended plaint.

The proposed amendment appears at paragraph 13 (a) and the question that arises is whether or not the said amendment is time barred and therefore prejudicial to the defendants.

From the wording of the proposed amendment, it is clear that it is both anchored in law and fact. If it were to be determined on the law alone, I would have no hesitation to disallow the same. However, evidence will have to be required to establish the factual angle of the proposed amendment and therefore it cannot be said to be time barred. Above all, however, is the fact that no prejudice has been alleged shall be visited upon the defendants if that amendment were to be allowed.

Guided by the authorities cited and the quest to do justice to all parties, I allow the amendment sought which shall be effected on payment of fees required within 7 days of this ruling. The defendants are at liberty to file amended defences to the said amendment within 14 days of service of the amended plaint. The plaintiff shall however pay to the defendants the costs occasioned by this application.

Dated, signed and delivered at Nairobi this 10th Day of April, 2019.

A. MBOGHOLI MSAGHA

JUDGE