



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

COMMERCIAL AND ADMIRALTY DIVISION-MILIMANI

CIVIL CASE NO.614 OF 2012

EQUATORIAL COMMERCIAL BANK LIMITED.....APPLICANT

VERSUS

ANIMAL HEALTH ADVANTAGE LIMITED.....1ST DEFENDANT/RESP

CHARLES ONYANCHA.....2ND DEENDANT/RESP

DR J.K.MISOL.....3RD DEFENDANT /RESP

HON.CHRISTANTUS B. OKEMO.....4TH DEFENDANT/RESP

JOANNIE WAMUYU.....5TH DEFENDANT/RESP

DAVID OLIWA.....6TH DEFENDANT/RESP

RULING

This a ruling on the Plaintiff's application dated 4th May 2017 seeking leave to amend pleadings by changing the Plaintiff's name to Spire Bank.

On 28th April 2017 parties herein indicated to the Court that they are not opposed to Court annexed mediation. The matter was referred to mediation Deputy Registrar for mediation

Record show that parties chose Ms. Judy Thongori was appointment as mediator in this matter.

Before the matter could proceed for mediation, Counsel for the 1st, 2nd and 5th Defendants was opposed to the matter proceeding from mediation before the application herein seeking change of Plaintiffs name could be disposed of.

Ground on the face of the application is that, Plaintiff was formally known as Equatorial Commercial Bank Limited but the name recently changed to Spire Bank Limited.

The application is supported by Affidavit sworn by Keziah Rutto on 4th May 2017. She attached Certificate of change of name to the Affidavit. She averred that the change of name do not affect the rights and obligations of Equatorial commercial Bank; that the agreement entered between Plaintiff and Defendant include its successors and assigns. She attached letter of credit and term loan dated 1st September 2004.

Counsels for Defendant sought leave on 19th March 2018 to respond to the application herein. They were granted 7 days to file response.

1st , 2nd and 5th Defendants filed grounds of opposition dated 26th March 2018. Ground raised is that the Defendants have not had any dealings with the Applicant and the intentions of change of name from Equatorial Commercial Bank to Spire Bank are not known.

The 3rd Defendant contend that there is no scheme and/or deed of transfer or assignment transferring rights and liabilities from SCBCL to Plaintiff in their merger to cause the Defendants to shoulder any purported responsibilities in respect of alleged mortgage or charge with SCBCL.

I have considered arguments by all the parties herein.

On perusal of the ruling delivered on 14th July 2015 and note the Court gave its opinion on the issue of merger of Southern Credit Bank and Equatorial Commercial Bank.

In paragraph 13 of the ruling date, Court indicated that notice of the merger was issued to the public by Gazette Notice No.7745 Vol.CX No.67 dated 9th July 2010.

The Court further noted that there was a certificate of change of name from Southern Credit Bank to Equatorial Commercial Bank Limited.

From submissions of parties, the name has changed from Equatorial Bank to Spire Bank. The respondents have opposed amendment to reflect the change. Certificate of change has been attached.

Deed of guarantee executed by the 2nd to 6th Defendant provide that the benefits and rights of guarantee may be assigned to or enforced by any such company in such a manner to all intents and purposes as if such company had been named in the guarantee instead of or in addition to the bank.

There is no doubt that the name of the party which filed the suit has changed .The change has been registered.

The deed of guarantee between the parties herein allowed assignment of rights and obligation to any other company.

In the presence of such a clause in the Deed of Guarantee, I do not see reason to deny the Applicant leave to amend the name in the pleading to reflect the correct names of the party currently assigned the Guarantee.

FINAL ORDER

1. Application dated 4th May 2017 is hereby allowed.
2. Plaintiff to amend the Complaint within 7 days from date of delivery of this ruling.
3. Mention within 14 before the mediation Deputy Registrar for directions on mediation.
4. Costs in the cause.

Ruling, Delivered, Dated and Signed at Nairobi this 1st day of November, 2018

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RACHEL NGETICH

JUDGE

IN THE PRESENCE OF

Jasmine: **COURT ASSISTANT**

Kamau H/B for Mrs. Mwihuri: **COUNSEL FOR APPLICANT**

Bwomote: **COUNSEL FOR 1ST, 2ND & 5TH DEFENDANTS**

Ongeny H/B for Kimaru Wachira: **COUNSEL FOR 3RD DEFENDANT.**