

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

CIVIL CASE NO. 63 OF 2015

JOHN MARTIN MUCHIRI MUGO.....PLAINTIFF

VERSUS

BRITISH-AMERICAN INSURANCE COMPANY (K) LIMITED....DEFENDANT

REASONS FOR GRANT OF LEAVE TO AMMEND THE PLAINT

1. This afternoon, I did allow the plaintiffs application to amend the plaint and introduce claims for loss of user and pre-accident value of a motor vehicle. In making that summary decision I took into account the principle of law that amendment sought before hearing commences should be granted as of course unless prejudice be demonstrated to await the opposite party and that there can never be prejudice to the other side incapable of compensation by an award of costs.^[1]

2. I have equally taken regard of the statutory dictate that courts allow amendments for the purposes of enabling the court determine the real questions in controversy between the parties^[2]. With those principles in mind and having noted the objection filed by the Defendant to the effect that the vehicle was registered in joint names of persons not parties to the suit and that the sum sought points towards desire to unjust enrichment, I deem those as factual matters the defendant can plead and lead evidence upon at trial but cannot be the basis to refuse leave to amend.

4. On costs, even though the plaintiff has succeeded in the application, he, having been the cause of the error at institution of the suit that necessitated the need to seek amendment, I direct that the costs be in the cause.

Dated at Mombasa this 14th day of November 2018.

P.J.O. OTIENO

JUDGE

^[1] Eastern Bakery vs Castelino [1958] E.A. 461

^[2] Order 8 Rule 5