



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
COMMERCIAL & ADMIRALTY DIVISION

CIVIL CASE NO. 42 OF 2013

ANTONIADIS EVANGELOS.....PLAINTIFF

-VERSUS-

PEMA FARM FRESH LIMITED.....1ST DEFENDANT

CORET PETRUS WILHELMUS JOSEPHUS.....2ND DEFENDANT

MAUREEN WAKASA.....3RD DEFENDANT

RULING

1. The plaintiff has by the *Notice of Motion* dated 19th July 2018 seeks to amend his plaint. The application is opposed by the defendants.
2. The opposition is based on the grounds that the application is filed after inordinate delay; is an afterthought; is brought in bad faith; and that the amendments seeks to alter or substitute the cause of action.
3. **Order 8 Rule 2 (3) of the Civil Procedure Rules** (the Rules) provides that the court may at any stage of the proceedings allow a party to amend its pleadings. *Justice Gikonyo* in the case **ANDREW WABUYELE BIKETI -V- CHINESE CENTRE FOR THE PROMOTION OF INVESTMENT DEVELOPMENT & TRADE IN KENYA LTD & 2 OTHERS** (2015) eKLR discussed this power of the court and stated:

“...the court has discretion to order amendment at any stage before judgment. And amendment should be freely allowed provided it is not done mala fide, and does not occasion prejudice or injustice to the other party which cannot be compensated by award of costs.”

4. *Justice Havelock* in the case **DANIEL NGETICH & ANOR -V- K-REP BANK LIMITED** (2013) eKLR stated:

“Normally the court should be liberal in granting leave to amend a pleading. But it must never grant leave for amendment if the court is of the opinion that the amendment would cause injustice or irreparable loss to the other side or if it is a devise to abuse the process of the court.”

5. With the above in mind, I need to consider whether the amendment sought by the plaintiff will cause the defendant an injustice.
6. The plaintiff's claim is that his co-shareholders, the 2nd and 3rd defendants, shut him out of the business of the 1st defendant company and in so doing the 2nd and 3rd defendants attempted to start another business using the infrastructure and machinery of the 1st defendant company.
7. The plaintiff prayed, by his plaint, for permanent injunction to restrain the defendants from passing off, rebranding or opening a business known as ***Pema Fresh Company Limited*** at Adams Arcade; a permanent injunction restraining the defendants from interfering with the assets, business and tenancy of the 1st defendant company; that the defendants be ordered to release all funds received as profit derived from the business operated as ***Pema Farm Fresh Company***; and for general damages for loss of income.
8. The plaintiff, by the proposed amendments, seeks to strike out prayers for injunction and instead prays for damages for breach of contract

and loss of business. In the alternative plaintiff seeks to obtain full control and management of 1st defendant company. The plaintiff also seeks to add a prayer for specific performance.

9. The plaintiff seeks to amend his plaint after he has adduced evidence and after his last witness was examined in chief and now waits to be cross examined.

10. It follows that the defendant will be denied from cross examining the plaintiff and his witnesses on the prayer for specific performance and breach of contract. It is my finding that to allow the amendment sought, at this stage of proceedings would be prejudicial to the defendants. For that reason the court declines to grant the orders sought.

11. In the end the ***Notice of Motion*** dated **19/7/2018** is dismissed with costs to the defendants.

DATED, SIGNED and DELIVERED at NAIROBI this 13th day of December, 2018.

MARY KASANGO

JUDGE

Ruling read and delivered in open court in the presence of:

Court Assistant.....Sophie

..... for the Plaintiff

..... for the Defendants

MARY KASANGO

JUDGE