



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

HCC NO. 352 OF 2014

ROYAL MEDIA SERVICES LIMITEDPLAINTIFF

VERSUS

INDEPENDENT ELECTIONS

& BOUNDARIES COMMISSION.....1ST DEFENDANT

MR. ISSAK HASSAN.....2ND DEFENDANT

MR. J.K OSWAGO.....3RD DEFENDANT

RULING

1. The Notice of Motion dated 13th September 2016 seeks the following Order:-

1. THAT Leave be granted to the Plaintiff to further Amend its Plaintiff by joining the Intended 4th Defendant in terms of the annexed draft further amended Plaintiff.

2. As it is clear from the annexed draft of the Further Amended Plaintiff, the Amendments sought plead the perceived role of the proposed 4th Defendant in the Plaintiff's Claim.

3. The 1st Defendant opposes the Application and filed 4 Grounds of Opposition which are:-

1. THAT there is no substratum to the Application, the only exhibit in support being inadmissible.

2. THAT the Intended Amendments are no meant to advance the effectual and complete determination of suit, but would rather obfuscate it.

3. THAT the Intended Joinder of the 4th Defendant is aimed at bullying the Defendant in the litigation of this suit.

4. THAT the Intended Amendment is unnecessary.

4. The Law on Amendment of Pleadings is that it shall be freely allowed at any time of the Proceedings, before Judgement, where the amendment is necessary for purposes of determining the real question in issue or controversy raised by the Parties and as long as it does not occasion prejudice or injustice to the

other side which cannot be properly compensated.

5. It is true as pointed out by the 1st Defendant's Counsel that since the presentation of this suit on 15th August 2014, it has not been set down for hearing. The Court Record shows that the matter has come up for Case Management Conference on two occasions. On 24th June, 2016 neither of the Parties appeared and the Court adjourned the matter generally. When due again for the Conference on 16th September 2016, the Plaintiff's Counsel told Court that it was the Plaintiff's wish that the current Application be disposed of first.

6. Before that could be done the Plaintiff filed another Application of 27th September 2016 but which was withdrawn on 11th November 2016.

7. The Record therefore shows that the Plaintiff has not prosecuted his case diligently. Again to its discredit the Plaintiff had on one other past occasion (6.11.2015) been allowed to amend the Plaint and enjoin the 2nd and 3rd Defendants and that should have been occasion to also enjoin the now Intended 4th Defendant.

8. Yet while the Plaintiff has been far from an assiduous Suitor, I cannot say that it has engaged in a scheme to deliberately delay or to immobilize the progress of this matter. I would not use the indiligence so far demonstrated by the Plaintiff as a reason to disallow the Application. And this matter can be distinguished from the circumstances in JOHN MULWA KANG'AATU VS. PAN AFRICAN INSURANCE CO. LTD [2015] eKLR where the Court disallowed an Application for Leave to amend Pleadings which was brought 13 years after the suit had been filed. There the delay was very substantial.

9. Is the Amendment sought necessary? In support of the Application is an Affidavit of Dr. Samuel Kamau Macharia sworn on 13th September 2015 to which has annexed correspondence between the 1st Defendant and the Intended 4th Defendant where the 4th Defendant assures the 1st Defendant of additional funds of Kshs. Two Hundred million (Kshs.200,000,000/-) for Voter Education and Mobilization for Voter Registration. The Plaintiff's Claim is for a sum of Kshs.182,000,000/= in respect to Electoral process awareness and Voter Registration Campaigns undertaken by way of Broadcasting, Advertisement and Road Shows on behalf of the 1st Defendant. My understanding of the Plaintiff's grievance against the intended 4th Defendant is that its claim is outstanding because the 4th Defendant has not kept its word.

10. Whether or not the Plaintiff would be able to sustain a claim against the Intended 4th Defendant is a matter that must be left for another day. For now the Application passes the test that the amendment sought is not to merely to bring in a witness but may turn out to be necessary for determining the real questions in controversy between the parties.

11. The Notice of Motion of 13th September 2016 is hereby allowed with costs. The further Amended Plaint shall be filed and served within 14 days of today.

Dated, Signed and Delivered in Court at Nairobi this 10th day of February ,2017.

F. TUIYOTT

JUDGE

PRESENT;

N/A for Plaintiff

Omolo for Defendant

Alex - Court cler