



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL SUIT NO. 931 OF 2005

FRANCIS GACHANGO KAMAU.PLAINTIFF

VERSUS

KENYA POWER & LIGHTING CO. LTD.1ST DEFENDANT

HANNAN WANGUI MWANGI.2ND DEFENDANT

R U L I N G

1) Francis Gachango Kamau, the Plaintiff herein, took out the summons dated 11th April, 2016 whereof he sought for the following orders: -

- 1. The Plaintiff be granted leave to further amend the plaint in the manner set out in the draft further amended plaint annexed to the support on affidavit.***
- 2. That the draft further further further amended plain annexed herein be deemed to have been duly filed on time.***
- 3. This suit be transferred to the Chief Magistrate's Court.***
- 4. The court do grant any other orders as it may deem necessary.***
- 5. Costs of this application be in the cause.***

2) The summons is supported by the affidavit of John. M. Chigiti. When served the 1st Defendant filed grounds of opposition to resist the summons. When the summons came up for inter partes hearing, learned counsels recorded a consent order to have the application disposed of by written submission.

3) I have considered the grounds stated on the face of the summons and the facts deponed in the supporting affidavit and the grounds of opposition. I have further considered the written submissions. It is the submission of the Plaintiff that there is need to further amend the plaint as proposed and that the Magistrates Act, 2015 donates pecuniary jurisdiction to the Chief Magistrate's court. It is said that the proposed amendment will clearly capture the singular liability of the 1st Defendant now that the 2nd Defendant has passed on and her case having abated.

4) The Defendant is of the submission that the summons is an abuse of the court process having been given leave to amend the plaint more than three times. It is also pointed out that if the amendment is authorized it will have the effect of denying the 1st Defendant the defence of limitation.

5) I have carefully perused the proposed amended plaint. It is apparent that the application seeks to remove the 2nd Defendant's name and to introduce new particulars of negligence. With great respect, I agree with the 1st Defendant's submission that the proposed amendments shall completely alter the character of the claim against the 1st Defendant. In my humble view, there is no justification for the delay or failure by the Plaintiff to get its case right from the outset having been given three other amendments.

6) A careful perusal of the record will reveal that the Plaintiff failed to take action early enough to prevent the 2nd Defendant's case from abating. I am convinced that the introduction of the new particulars is prejudicial to the extent that, the 1st Defendant is accused of negligence even in instances where the same would be attributable to the 2nd Defendant, now deceased. It is trite law that the amendment of the pleadings relates back to the claim to the first date of filing and in effect denies the 1st Defendant, the defence of limitation.

7) In the end and on the basis of the above grounds the summons dated 11th April, 2016 is found to be without merit. It is dismissed with costs to the 1st Defendant.

Dated, Signed and Delivered in open court this 10th day of March, 2017.

J. K. SERGON

JUDGE

In the presence of:

..... for the Plaintiff

.....for the Defendant