



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KISUMU**

**CIVIL SUIT NO. 83 OF 2011 (Multi-Track)**

**BHUPENDRA SOMABHAI PATEL ..... PLAINTIFF/APPLICANT**

**VERSUS**

**KINGSWAY TYRES LIMITED ..... 1ST DEFENDANT/RESPONDENT**

**MANOJ SHAH .....2ND DEFENDANT/RESPONDENT**

**RULING**

By the Notice of Motion dated 7th March 2016 the Plaintiff seeks an order for leave to amend his plaint so as to include a prayer for General damages for false imprisonment. The gist of the application as can be discerned from the grounds on its face, the supporting affidavit and the submissions of his Advocate at the hearing is that whereas he has pleaded facts relating to his alleged forced incarceration by the defendant he inadvertently omitted to include a prayer for corresponding relief for general damages for the same. He contends that the amendment is necessary to enable this Court to effectively and conclusively determine all the issues in controversy between the parties.

The application was opposed for reason that the claim for general damages for false imprisonment has already been overtaken by limitation; that the Plaintiff was not under any disability and that it would be prejudicial to allow the Plaintiff who has already given his examination in chief to prosecute his claim by way of instalments by introducing a fresh cause of action which in any case is time barred.

At the hearing of the application Counsel for the Plaintiff relied on the following three cases in urging this Court to allow the application:-

1. *Epaineto V. Uganda Commercial Bank [1971]E.A. 185.*
2. *Waljee's (Uganda) Ltd. V. Ramji Runjabhai Bugerete Tea Estates Ltd. [1971]E.A. 188.*
3. *Faulkner V. Agricultural Development Corporation [1978] KLR 49.*

Counsel for the Respondent did not attend the hearing.

Amendments of pleadings is provided for under Order 8 of the Civil Procedure Rules. Under Order 8 rule 1(1) a party may without the leave of the Court amend any of his pleadings once at any time before the pleadings are closed. Once the pleadings are closed a party requires the leave of the Court to amend. It is correct as deposed by the 2nd Defendant/Respondent that this application is being made long after the period of limitation for a claim for damages for false imprisonment the said period having expired in or around March 2014. However Order 8 rule 3(1) does provide that even where the relevant period of limitation has expired the Court may grant leave if it thinks just so to do. The issue for

determination therefore is whether it is just to grant the leave sought.

It is my finding that given that the Plaintiff has pleaded the relevant particulars for the claim in the plaint he shall not by the amendment introduce a new cause of action and that it is in the circumstances just to grant the leave sought. Accordingly his application for amendment is granted. The amended plaint be filed and served within fourteen days of this ruling. Costs of the application be in the cause and the parties do proceed to fix the matter for further hearing in the registry.

It is so ordered.

**Signed, dated and delivered at Kisumu 5th day of May 2016**

**E. N. MAINA**

**JUDGE**

**In the presence of:-**

Mr. Ragot for Plaintiff/Applicant

Mr. Terimo for Defendant/Respondent (for Tiego Advocate)

CC: Felix Magutu