



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MOMBASA
CIVIL SUIT NO. 120 OF 2009

BLUE FLAG GENERAL TRADING LTDPLAINTIFF

VERSUS

GREEN LINK CARGE SERVICES1st DEFENDANT

GREEN ISLAND SHIPPING SERVICES LTD.....2nd DEFENDAN

RULING

1 Before me is the Notice of Motion dated 8th June 201. By that application the defendant seeks an order that the court do extend the time of filing its amended defence and courter claim.

2. The defendant, obtained leave of the court to file amended defence on 21st June 2012 but failed to file it within the 14 days provided under Order 8 Rule 6 of the Civil Procedure Rules. That Rule provides:

“Where the court has made an order giving any party leave to amend, unless the party amends within the period specified or, if no period is specified, within fourteen days, the order shall cease to have effect, without prejudice to the power of the court to extend the period.”

3 Indeed on 21st June 2012 the court did not give a specific period within which the amendment was to be effected. That being so by virtue of the above “Rule the defendant should have filed the amended defence within 14 days of the court order.

4 The following is the reason given in the affidavit in support by counsel of the defence why that amended defence was not filed within the specified period set out in Order 8 Rule 6:

“ That my advocate on record M/s Kadima Esq. has informed me which information I believe to be true that after the leave to amend was granted, the advocate in conduct of the matter inadvertently and purely on human error failed to amend the defence within the 14 day period.... and it was (not) until 29th May 2015 when the same was done.”

5 The plaintiff though served was not represented at the hearing of the application and neither did the plaintiff file any documents in opposition to defendant’s application.

6 Order 8 Rule 6 affords the court discretion to extend the period of filing an amended pleading. The defendant has in my view explained the reason for delay in filing the amended defence. It is due to human error which in my view is excusable.

7 In conclusion therefore leave is granted to the defendant to file an Amended Defence and Counter Claim out of time. In that regard the Amended Defence and Counter Claim filed in court on 29th May 2015 is deemed as though filed with leave of the court. There shall be no orders as to costs in regard to the Notice of Motion dated 8th June 2015.

Dated and delivered at Mombasa this 9th day of July 2015.

MARY KASANGO

JUDGE

9.7.2015

Coram

Before Justice Mary Kasango

C/assistant – Kavuku

For the Plaintiffs:

For 1st Defendant:

For 2nd Defendant:

Court

Ruling delivered in their presence/absence in open court.

MARY KASANGO

JUDGE