



**REPUBLIC OF KENYA**

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

**CIVIL SUIT 17 OF 2006**

**PARAMOUNT ENGINEERING CO. LIMITED.....PLAINTIFF**

**VERSUS**

**FARM ENGINEERING INDUSTRIES LIMITED.....DEFENDANT**

**R U L I N G**

By a notice of motion dated 10-1-2011 the plaintiff prays for the following order:-

- 1) That the plaintiff be granted leave to amend the plaintiff's name by substituting Paramount Engineering Company Limited with Paramount Engineering (2005) Limited and that the plaint be amended accordingly.**
- 2) Cost of the application be provided.**

The affidavit by **Satwant Singh Dhanjal** dated 11-1-2011 and sworn on the same date states that their erstwhile advocate on record failed to indicate the proper name of the plaintiff as **Paramount Engineering Company Limited**.

The said affidavit has attached several annexures. There is also a supplementary affidavit sworn on 9-2-2012. The applicant demonstrated that **Paramount Engineering Works Limited** was incorporated on 11-12-1985 and the same was changed to Paramount Engineering (2005) Limited on 11-1-2005. The deponent apparently is the director of the companies.

The respondent on the other hand has opposed the application vide the grounds of opposition filed on 4-4-2012. The substance of their opposition is that Paramount Engineering Works Limited is not the plaintiff in the suit and cannot be subject matter of an application to substitute.

The respondent further claim that there is no entity called Paramount Engineering Company Limited capable of prosecuting the application. The issue to be determined is the question of whether Paramount Engineering Company Limited indeed existed.

From the documents availed before court and the various affidavits by the applicant the suit property namely **LR. No. 18127** is registered in the names of Paramount Engineering Works Limited and not Paramount Engineering Company Limited. I do agree therefore with the respondents that to the extent of that position the plaintiff does not exist. Where does this leaves the plaintiff's application? It is worthy to note that the respondent under paragraph 2 of their amended statement of defence, have admitted the existence of the plaintiff.

The applicant has blamed its former counsel for the mistake. This court pursuant to the provision of section 1A, 1B of the Civil Procedure Act and more importantly section 159 of the constitution, shall be inclined to grant the application.

It has been said severally that mistakes of a counsel cannot be visited upon the litigant. I do hold that the said application is made in good faith and in any event the expected amendment shall not prejudice the respondents.

The application is allowed. The applicant do amend and serve their plaint within 14 days from the date herein. The respondent shall have the costs of the application.

**Dated, signed and delivered this 13<sup>th</sup> day of July, 2012.**

**H.K. CHEMITEI  
JUDGE**

In the presence of:

.....for the applicant

.....for the respondent

HKC/va