



REPUBLIC OF KENYA

IN THE HIGH COURT

AT KISUMU

Civil Case 21 of 2007

SHAJANAND INDUSTRIES LTD PLAINTIFF

-VERSUS-

KENYA POWER & LIGHTING CO. LTDDEFENDANT

RULING

The plaintiff Shajanand Holdings Limited filed this application dated 30th November, 2010 seeking for leave to amend its plaint in order to include further particulars in support of its claim. It contends that unless the order is granted it will suffer prejudice and that the amendments will not prejudice the defendant.

The application was opposed by the defendant Kenya Power & Lighting Co. Ltd who filed grounds of opposition to the effect that the amendment will introduce a new cause of action which action is time bared further the amendment and intended to defeat the preliminary objection raised in the defence.

I have considered submissions by both learned counsels on record. I have considered also the initial plaint and the proposed amendments.

In paragraph 3 of the initial plaint dated 21st February, 2007 the plaintiff pleaded as follows:-

“(3) At all material times relevant to this suit the plaintiff was a customer of the defendant vide an electricity supply contract in respect of its premises situated at Matete area in Webuye, known as Tajoni Emporium, account number 6640237-02 full particulars of which are well within the defendants knowledge.”

I will pose here to consider the import of paragraph 3 of the plaint printed verbatim above. The said paragraph is clear to me that the plaintiff alleges a contract between the two parties for the supply of electricity.

In paragraph 4 of the initial plaint the plaintiff alleged negligence and recklessness on the part of the defendant in failing to monitor and maintain its transformers. It went ahead to give particulars of the alleged negligence.

With the above 2 paragraphs i.e 3 & 4 of the plaint to say that the claim was based on tort would therefore

not be right. My understanding is that the plaintiff claimed negligence based on the contract between the 2. I understand the proposed amendment to be an addition to the allegations already made.

The second amendment proposed is a proposed is a reducing of the loss from Kshs 4,000,000/= to 1,125,000/=. This is definitely not a new matter.

In my view the 1st amendment cannot be said to be an introduction of a new cause of action, as urged by the defence. The effects of the amendment is to make the pleadings more clearer and precise. The effect of the 2nd amendment is a reduction from one sum to another. Although the defendant claimed time limitation and prejudice likely to be suffered, the amendments in my view can not deviate in substance from the initial claim. None of the proposed amendments would in any event prejudice the respondent. The claim alleged was not substantiated.

I will therefore allow the amendment. The amended plaint be filed and served within 14 days. Costs in the cause.

This being an old matter parties are directed to close the pleadings within the next 30 days from the date hereof. Compliance with order 11 to be within the next 45 days from today and a hearing date be taken within the next 3 months of the date hereof.

DATED AND DELIVERED THIS 6TH DAY OF JULY, 2012.

ALI-ARONI

JUDGE

In the presence of:

..... **present for plaintiff**

.....**present for defendant**