



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI COMMERCIAL COURTS)**

Civil Case 539 of 2009

MIDDLETOWN FOREX BUREAU LIMITED..... PLAINTIFF

VERSUS

**ECO BANK LIMITED..... 1ST DEFENDANT
SECURICOR SECURITY SERVICES KENYA LIMITED 2ND DEFENDANT**

RULING

1. The suit against the 1st defendant was filed on 29th July 2009. The 1st defendant entered appearance on 23rd September 2009 and filed their defence which is titled “Conditional Defence by ECO Bank Kenya Limited” on 12th October 2009. On 10th November 2009, the plaintiff filed an amended plaint which was amended on the same day. It is contended amendment was done without the leave of the court. The 1st defendant has now filed a notice of motion under **Order 1 r.10 and Order VI r.13 (c) of the Civil Procedure Rules**, seeking for orders that the amended plaint dated 10th November 2009 be struck out and so is the whole suit against the 1st defendant.
2. The application is supported by the grounds that the amended plaint was filed without the leave of the court which is an abuse of the process because the name of the 1st defendant was substituted. The plaintiff purported to obtain fresh summonses which were served upon the 1st defendant without the leave of the court.
3. This application was opposed by the plaintiff who relied on the grounds of opposition. It was argued that when the amendment was effected the pleadings had not yet closed. Moreover, the sole purpose of amending the plaint was not to substitute the 1st defendant but to describe the 1st defendant by their full names. The plaintiff merely added the word Kenya which did not cause the 1st defendant any prejudice.
4. Under order **VIA of the Civil Procedure Rules**, the rules provide when a party may amend pleadings without the leave of the court. Especially rule 1 which provides as follows:-

- “(1) A party may, without the leave of the court, amend any pleading of his once at any time before the pleadings are closed.***
- (2) Where an amended plaint is served
On a defendant –***
 - (a) If he has already filed a defence, the defendant may amend his***

- defence; and*
- (b) *If defence or amended defence shall be filed either as provided by these rules for the filing of the defence or fourteen days after the service of the amended plaint whichever is later.*
 - (3) *Where an amended defence is served on a plaintiff –*
 - (a) *If the plaintiff has already served a reply on that defendant, he may amend his reply; and*
 - (b) *The period for service of his reply or amended reply is fourteen days after the service on him of the amended defence”*

5. The 2nd defendant in this case filed the defence on 29th October 2009. Thus the pleadings should have closed 14 days after the 29th of October 2009 which in my calculation falls on or about 13th November 2009. Accordingly, I do not think that this amendment required the leave of the court. Moreover the overarching purpose of allowing amendments of pleadings is to ensure that all the issues between the parties which are in controversy are brought before the court to avoid multiplicity of suits. The amendment should also not cause injury or prejudice to the other party that cannot be compensated for in costs and the amendment is brought without malafides and does not alter the character of the suit.
6. The amendment which was effected in this case was merely to include the proper description of the 1st defendant which is allowable under the provisions of Order 1 r.10. The court is given discretion at any stage of the proceedings with or without any application by either party to add the name of a defendant. Failure to describe the 1st defendant is not a fatal mistake to warrant the striking of the suit. The Court of Appeal has emphasized in the case of **D. T Dobie & Company Kenya Limited vs Joseph Mbaria Muchina CA No.37 of 1978** as follow:-

“No suit ought to be summarily dismissed unless it appears so hopeless that it plainly and obviously discloses no reasonable cause of action, and is so weak as to be beyond redemption and incurable by amendment. If a suit shown a mere semblance of a cause of action, provided it can be injected with real life by amendment, it ought to be allowed to go forward for a court of justice ought not to act in darkness without the full facts of a case before it.”

7. The interest of justice in this matter as I see it will best be served by sustaining this suit. Accordingly, I decline to dismiss the suit. The amendment was brought as provided for by the Civil Procedure Rules. The application is dismissed with costs to the plaintiff.

RULING READ AND SIGNED ON 1ST MARCH 2010 AT NAIROBI.

M.K. KOOME
JUDGE