



REPUBLIC OF KENYA

IN THE HIGH COURT

AT NAIROBI

MILIMANI COMMERCIAL AND ADMIRALTY DIVISION

Civil Case 195 of 2008

MATUNDA ESTATE LIMITED PLAINTIFF

VERSUS

EVG-THREE CONSTRUCTIONS

SYSTEMS LTD. 1ST DEFENDANT

DEVELOPMENT BANK (K) LTD. 2ND DEFENDANT

R U L I N G

Application dated 31/3/09 seeking orders under **Order VI A Rule 3, 5, 7 and 8 Civil Procedure Rules** and **Section 3 and 3A of Civil Procedure Code, Cap. 21**. The 1st defendant seeks leave to amend its Amended Statement of Defence in terms of the defence attached on the ground that the amendments sought will assist the court in determining the real question in controversy. And failure to include the relevant amendments herein was an omission.

The application is opposed by the plaintiff on the ground that no basis has been disclosed for the grant of orders sought. And the affidavit is incompetent for being sworn by counsel the matters being in controversy. Furthermore, the proposed amendment is raising issues that are *res judicata* already decided by court in dated 3/2/2009. And that matter raised do not relate to any issue in controversy in this suit.

Power to court to allow amendments of pleadings is contained in **Order VI A Rule 3** which provides:-

“The court may at any stage of proceedings Allow any party to amend his pleadings.”

General power to amend is also granted to court to order any document to be amended for the purpose of determining the real question in controversy between parties or of correcting any defect or error in any

proceedings.

The applicant has not shown why the proposed amendments are required or which part of the defence is in error. The proposed further amendments are not indicated in the draft attached. The purpose of leave is to give court opportunity to look at the proposed amendment to ensure justice is done on both sides.

In the circumstances, it is not possible to determine what amendments are intended and therefore the purpose of granting leave is purposeless. Application is dismissed with costs.

Orders accordingly.

DATED, SIGNED and DELIVERED at Nairobi this 4th day of November, 2009.

JOYCE N. KHAMINWA

JUDGE