



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

ELC CASE NO. 209 OF 2008

HAMMOND HOLDINGS LIMITED.....PLAINTIFF

VERSUS

COAST COMPUTER BUREAU..... DEFENDANT

RULING

1. For determination is the Chamber Summons dated 17th August 2018 brought by the plaintiff under the provisions of Order 1 rule 3, 5 and 8 of the Civil Procedure Rules and Section 3A of the Civil Act. The plaintiff/applicant seeks orders;

(a) That this Honourable Court be pleased to grant leave to the plaintiff to amend the plaint in the manner shown on the annexed copies of the draft Amended Plaint and the Amended Plaint to be deemed as duly filed within time.

(b) That the plaintiff to file the Amended Plaint within fifteen (15) days from the date of the Order granting the plaintiff leave to amend the Plaint herein.

(c) That the defendant be at liberty to file an Amended Statement of Defence, if any, within fifteen (15) days from the date of service of the Amended Plaint on the defendant.

(d) That the costs of this application be costs in the cause.

2. The summons is supported by the affidavit sworn by Ketan Vrajlal Gandhi. Mr. Gandhi deposed that when the suit was filed, the service charge owing was Kshs.700,000/=. That in 2013 when the plaintiff's first witness was testifying, the service charge had accrued in excess of Kshs3,000,000/=. That evidence adduced shows how the service charge accrued vice P ex 37-41. That the intended amended will not prejudice the defendant but to assist the court to adjudicate upon and settle all questions arising between the parties. The applicant annexed a copy of the draft amended plaint.

3. The application is opposed by the defendant vide his replying affidavit dated 6th November 2018 stating that the plaintiff no longer owns plot no XX1/396 having transferred her interests over the plot to Bhagwanji Raja Charitable Foundation in June 2010. The defendant contends that in their bundle, they have annexed audited report for service charge covering upto 31st December 2010. That the defendant should not be saddled with defending a claim that has no chances of success.

4. The defendant termed the application an abuse of the court process for failing to include an amendment that deletes the prayer on termination of the lease and vacant possession. The defendant therefore urges the court to dismiss the application with costs.

5. Parties field written submissions which I have considered. Under Order 8 rule 3(1) it is provided that the court may at any stage of the proceedings on such terms as to costs or otherwise allow any party to amend his pleadings. Order 8 rule 5 gives general power to amend for purposes of determining the real questions in controversy between parties or of correcting any defect or error in any proceedings.

6. In this instant, the amendment sought to be effected is to change the sum being claimed as service charge to read **Kshs.3,642,968.12** instead of Kshs.701,434/= as pleaded. The plaintiff has explained that the change is necessitated by the fact that the amount increased from the date the suit was filed which sums had not accrued at the time of filing the suit. That the amendment would not prejudice the defendant because the documents in support of the new amount were already produced in evidence in the case. Further the application include an order giving leave to the defence to amend their defence if deemed necessary.

7. The defendant opposed the amendment because of the change of ownership that has taken place in respect of the suit property. In paragraph 8 of the affidavit in support of the application, the documents the plaintiff relied on in seeking the amendment includes audit

reports for the period 2006 - P ex 37; 2007- P ex 38; 2008 – P ex 39; 2009 – P ex 40 and 2010 ; P ex41. Since the defendant has admitted that the plaintiff transferred her interest in July 2010, there is no basis why they are contesting the amendment. The defendant submitted the application constitutes abuse of court process for failing to delete some prayers in the draft amendments. Courts only grant what is prayed for. The defendant has not moved the court to strike out these prayers. The suit is still at the stage of hearing the plaintiff's case. The defendant can challenge the said orders while they are presenting their defence.

8. In conclusion, I find no reason why I should allow the amendment as the same will not prejudice the defendant. Accordingly the Chamber Summons dated 15th August 2018 be and is hereby allowed in terms of prayers (1) and (2) subject to payment of the requisite court fees. The amended plaint be served upon the defendant forthwith. Prayer 3 is also granted giving liberty to the defence to file amended defence if any within 15 days of service. Costs of the application ordered in the cause.

Ruling DATED SIGNED & DELIVERED at Mombasa this 14th day of June, 2019.

A. OMOLLO

JUDGE.