**Central Kenya Ltd v Trust Bank Ltd**

**Division:** Court of Appeal of Kenya at Nairobi

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**Date of judgment:** 18 February 2000

**Case Number:** 222/98

**Before:** Gicheru, Bosire and Owuor JJA

**Sourced by:** LawAfrica

**Summarised by:** H K Muta

*[1] Practice – Pleadings – Amendment of pleadings – Application to amend plaint – Application to join*

*more parties as Defendants – Factors to be considered in determining application – Orders I and VIA –*

*Civil Procedure Rules.*

**Editor’s Summary**

The parties to this appeal were involved in a protracted dispute over a parcel of land located in Thika

Municipality of which the Appellant was originally the registered owner. In 1995, the Appellant filed a plaint against the Respondents seeking various orders related to the suit property. It also sought an interlocutory injunction from the court to restrain the Respondents from dealing with the suit property.

The application was denied. An appeal to the Court of Appeal in civil appeal number 215 of 1996 was dismissed on the grounds, *inter alia*, that certain issues raised by the appeal touched parties not joined to the suit and against whom orders could not be made without affording them an opportunity to be heard.

The Appellant then reverted to the High Court and applied under Orders I and VIA of the Civil Procedure

Rules for leave to join seven additional persons as Defendants to the suit and also for leave to amend the plaint in order to fully spell out its claim against the original and the intended defendants. The application was declined. The Appellant now appealed against that decision on the grounds, *inter alia*, that the judge had not been dispassionate in his handling of the matter, that he had considered extraneous matters in making his decision and that he had failed to consider that the Respondents did not plead that they would suffer any loss not compensable by damages if the proposed amendments were allowed.

**Held** – The amendment of pleadings and joinder of parties was aimed at allowing a litigant to plead the whole of the claim he was entitled to make in respect of his cause of action. A party would be allowed to make such amendments of pleadings as were necessary for determining the real issue in controversy or avoiding a multiplicity of suits provided (i) there had been no undue delay, (ii) no new or inconsistent cause of action was introduced, (iii) no vested interest or accrued legal right was affected, and (iv) the amendment could be allowed without injustice to the other side. Accordingly, all amendments should be freely allowed at any stage of the proceedings, provided that the amendment or joinder did not result in prejudice or injustice to the other party that could not be properly compensated for in costs; *Beoco Ltd v*

*Alfa Laval Co Ltd* [1994] 4 All ER 464 adopted. Neither the length of the proposed amendments nor mere delay were sufficient grounds for declining leave to amend. The overriding considerations were whether the amendments were necessary for the determination of the suit and whether the delay was likely to prejudice the opposing party beyond compensation in costs.

The judge erred in making remarks that were inappropriate in the circumstances of an interlocutory application and that tended to prejudge the merits of the Appellant’s case, especially as the parties were yet to adduce evidence in support of their respective cases. These remarks tended to suggest that the judge was not dispassionate.

Though the decision as to who to sue was essentially the Plaintiff’s, the Court could, under Order I,

Rule 10(2) of the Civil Procedure Rules, give appropriate directions if it considered that there were parties who should have been joined or were improperly joined. In civil appeal number 215 of 1996, the Court had suggested that some of the proposed defendants should have been made parties and the judge should have taken that as a cue to grant the application. Accordingly, the appeal would be allowed and the Appellant granted the leave prayed for.

**Case referred to in judgment**

(“**A**” means adopted; “**AL**” means allowed; “**AP**” means applied; “**APP**” means approved; “**C**” means

considered; “**D**” means distinguished; “**DA**” means disapproved; “**DT**” means doubted; “**E**” means

explained; “**F**” means followed; “**O**” means overruled)

*Beoco Ltd v Alfa Laval Co Ltd* [1994] 4 All ER 464 – **A**