**Mohan Meakin (K) Limited v Attorney General**

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

**Date of judgment:** 25 September 2006

**Case Number:** 4267/91

**Before:** Visram J

**Sourced by:** LawAfrica

**Summarised by:** R Rogo

*[1] Civil procedure – Striking out pleadings – On a consent order if a matter is* res judicata*.*

*[2] Civil procedure – Application to amend a plaint to include special damages – When amendment of*

*pleadings raises new issues.*

**Editor’s Summary**

The plaintiff and the defendant entered a consent order to the effect that an exemption granted by the Minister of Finance to one of the plaintiff’s competitors was null and void. It was further ordered that the issues of general damages would proceed to hearing. Based on the consent order, the plaintiff filed an application to amend its plaint seeking special damages of KShs 1 464 837 167. There was no claim for special damages pleaded in the original plaint. The only claim in the plaint was for “general damages”. The plaintiff’s application to amend the plaint and include the special damages was allowed by the court in default of appearance of the Attorney General. Thereafter, the defendant filed its amended defence invoking the limitation period as it relates to the claim of special damages and denying that the plaintiff suffered any damage. The plaintiff sought to have the entire amended defence struck out.

**Held** – No court of law will strike out a whole pleading where only some paragraphs are said to be offensive. The issues raised in the amended defence had not been settled through the consent orders and as such, were not *res judicata*. The amended plaint raised substantially new issues that had not been pleaded in the original plaint. The defendant was entitled to respond to the new claim for special damages, including invoking any statutory defences it had in relation to the new claim.

**Cases referred to in ruling**

(“**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)

***East Africa***

*Co-operative Merchant Bank Limited v Wekesa* [1999] LLR 929 (CAK)

*DT Dobie and Company Limited v Muchina* [1982] 1 KLR 1

*Kasereka v Gateway Insurance Company Limited* [2003] 2 EA 502

*Mburu Kinya v Gachini Tuti* [1978] KLR 69

*Melika v Mbuvi* [2001] 1 EA 121

**United Kingdom**

*Ashmore v British Coal Corporation* [1990] 2 QB 338