**Muite v Attorney-General**

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

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**Date of judgment:** 25 February 2005

**Case Number:** 188/02

**Before:** Nyamu J

**Sourced by:** LawAfrica

*[1] Constitutional law – Enforcement of fundamental rights and freedoms – Amendment of pleadings –*

*Whether envisaged under the Constitution.*

**Editor’s Summary**

By chamber summons application, the applicant sought to amend the originating motion that had commenced the proceedings for enforcement of the applicant’s fundamental rights and freedoms. The application by originating motion had been filed 6 months after the publication of the Constitution of Kenya (Protection of Fundamental Rights and Freedoms of the Individual) Practice and Procedure Rules of 2001. The amendment sought was to enable the application to comply with the law as provided under the Rules, that is, to commence the proceedings by way of originating summons as required by rules 11 of the Rules. The application also sought to bring additional facts to the court.

**Held** – Under Order XXXVI, rule 9 of the Civil Procedure Rules, the court has wide discretion to make any amendments necessary to make the originating summons accord with existing facts and to raise the matters in issue between the parties; in order to assist the court or the parties to ascertain the real issues between the parties. The right of access to the court, under section 84, is a fundamental right. The only bar to the right is failure to comply with the rules or contravention of the fundamental principles of law. *Labson Ltd v Manula Haulers Ltd t/a Tausi Travellers* Nairobi High Court civil case number 204 of 2003 followed. Our Constitution does assume the existence of fundamental principles of law. The principles behind the rules made under section 84(6) of the Constitution is to achieve the ends of justice because justice is one of the objectives of the Constitution. Allowing an amendment which ordinarily would be allowed under the Civil Procedure Act and Rules in order to have the matter fully articulated and argued on merit does serve the ends of justice and, therefore, is one of the objectives of the Constitution. Our Constitution does, indeed, assume the existence of the law of evidence and the rules of Civil Procedure insofar as it is practicable in the circumstances of the cases which come before the court and insofar as the law and the rules are in conformity and do not violate any specific provision of the Constitution. The court shall endeavour to ensure that the court’s power to award costs does not make it difficult or restrain the right of access to the court by those who could have genuine constitutional grievances to articulate.

**Cases 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)

*Booth Irrigation v Mombasa Water Products Ltd* High Court miscellaneous case number 1052 of 2004

*Francis Karani Elijah v Chairman of Kanu* High Court miscellaneous case number 235 of 2002

*Labson Limited v Manula Haulers Ltd t/a Tausi Travellers* Civil case number 204 of 2003 – **F**