

**IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)**

AT DAR ES SALAAM.

CIVIL CASE No. 210 OF 2017

M/S JUKA SECURITYPLAINTIFF

Versus

THE BOARD OF TRUSTEE

OF THE NATIONAL SOCIAL SECURITY FUND.....DEFFENDANT

RULING

12.02.2020 - 17.03.2020

J. A. DE-MELLO J;

An oral application for amendment of the Written statement of Defense was made by the Defendant, following allegations of new disclosure of a document that has been retrieved, and that, it is in the interest of justice for this Court to grant. The Application is opposed by the Counsel for the Plaintiff, on the ground that, if at all, it should be made since the First Pre-Trial Conference but, not this late hour when Final Pre Trial has been accomplished. This is unfair and abuse of Court process, he insists.

However, Counsel Duncan submits that, **Order VI Rule 17** of the **Civil Procedure Code Cap. 33** allows amendment and, alteration of pleadings at any stage of the proceedings.

Directing my mind to **Order VI rule 17** (supra) it provides;

“The Court **may** at any stage of the proceedings allow either party to alter or amend his pleading in such manner and, on such terms **as may be just**, and, all such amendments shall be made **as may be necessary for the purpose of determining the real questions in controversy between the parties.**”

As a general rule, sincerely, amendments of pleadings should be allowed at any stage of the proceedings where Court is satisfied that, it will enable to display the real question in controversy between the Parties for adjudication but, **not occasioning injustice to the opposite party**. It is clear and, as stated by **Counsel Duncan** that, amendment seeks to put record right following new disclosure from document that has been retrieved. However, his averment is limiting rather wanting, for not going thus far to disclose what that document is all about, for the other party let alone the Court, to be aware of.

However, **Order VI rule 16** (supra) under which this application was brought gives discretion for the Court, in determining whether or not it is merited for granting of such prayer. Other than the said law, several and many cases namely; **Angel Timothy Kingu & Mzaking International Transport Ltd. vs Bruno John Ngoo & Two Others, Land Case No. 384 of 2015**, borrowing the position in **Motohov vs. Auto Garage Ltd.** and **Another [1971] HCD NO. 81** at page 54;

"....Amendments shall be made as may be necessary for the purpose of determining the real question in controversy between the parties.

"The making of amendment is not really a matter of power of a Court but its duty, so that the substantially justice may be done."

The Court in the case of **Gaso Transport Services (Bus) Ltd versus Obene [1990-1994] EA 88**, went deeper in what should be *considered* when such prayer arises, observing;

"The amendments should not work injustice to the other side. An injury which can be compensated by the award of costs is not treated as an injustice. Multiplicity of proceedings should be avoided as far as possible and all amendments which avoid such multiplicity should be allowed, an application which is made 'malafide' should not be granted and no amendments should be allowed where it's expressly or impliedly prohibited by any law".

In the interim and intense scrutiny, I am uncertain whether the amendment sought is for the purpose of determining the real question of in controversy between the parties in ensuring substantial justice is done. I am saying so based on the fact that, Counsel has not disclosed to what is it exactly that the said document is all about and to which extent he wishes to amend the Written statement of Defense. The non disclosure is all that which raises eyebrows, leaving the Court in limbo in concluding that it leaves a lot to be desired and failing the test, put forward by the above cited authorities.

For the above reasons, I find that, the prayer sought in its confidential manner is not merited. In exercise power bestowed upon this Court, the discretion is judiciously invoked, as it is my settled view that the proposed amendment sought is **malafide**, as the prayer for amendment is hereby refused.

It is so ordered.



J. A. DE-MELLO

JUDGE

17/03/2020