

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

CIVIL CASE NO.248 OF 1994

**1. DAR ES SALAAM EDUCATION AND)
OFFICE STATIONERY)..... PLAINTIFFS
2. OMAR MGENI)**

VERSUS

**1. NATIONAL BANK OF COMMERCE)
2. MOHAMED HAMUD)
3. MAJEMBE AUCTION MART LTD)..... DEFENDANTS**

RULING

BEFORE N.P. KIMARO, J:

Although this case is celebrating its ninth year in court, the trial has not started. The court dealt with applications which went up to the Court of Appeal.

The application before me now seeks to amend the plaint so that the Defendants name reads NBC Holding Corporation instead of National Bank of Commerce. The only reason given is that there was an honest oversight in recognising that NBC has long ceased to exist and that the rights and obligations are now vested in the NBC Holding Corporation. The application was filed after the defendants raised a preliminary objection in its amended written statement of defence bringing up the issue. The amended written statement of defence was filed on 15/03/2001 while the application which seeks leave to amend the written statement of defence was filed on 30th March 2001.

Although the parties/advocates were ordered to file written submissions, it is only the plaintiff who filed written submissions. The defendant matter filed a counter affidavit nor written submissions while appreciating that Order VI rule 17 of the Civil Procedure Code 1966 gives the Court discretion to allow the parties to amend their pleadings at any stage for the purpose of determining the real question in controversy between the parties and there are court decisions to support this view, in this case. I will not allow the application.

The reason for doing so is because the application has been filed to pre-empt the preliminary objection which has been raised.

There is a decision of the Court of Appeal which, unfortunately I have forgotten the citation which it states that applications made for purposes of pre-empting previous issues raised should not be allowed.

I thus dismiss the application with costs.

N.P. Kimaro

JUDGE.

18/06/2001

18/6/2001

Coram: Kimaro, J.

Mr Mkali For the Applicant

Mr Mkali/ For the Respondent

Mr Mlama

cc: Manumbu Mrs.

Court: Ruling delivered today in Court chambers.

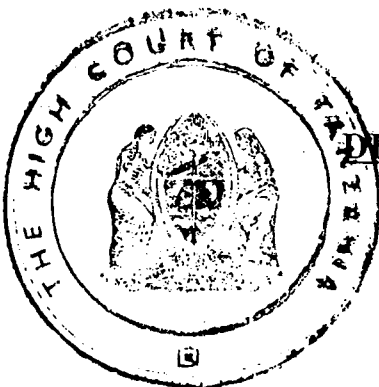
Order: The application is dismissed with costs. The preliminary objection to be argued by written submission. The defendant to file his submission by 2nd July 2001 - Reply by plaintiff by 16/07/2001 - Rejoinder if any by 23/07/2001
Ruling on 20/08/2007.

N.P. Kimaro

JUDGE.

18/06/2001

I certify that this is a true copy of the original.



DISTRICT REGISTRAR