

B E T W E E N:-

JOSEPHINE E.R. ELLIS

DESMOND C.O. ELLIS

A N D

CECIL O.E. KING

CORAM:-

HON. MRS. JUSTICE V.A.D. WRIGHT

HON. MR. JUSTICE N.D. ALHADI

HON. MR. JUSTICE M.E.T. THOMPSON

WRIGHT J.A.:— Learned Counsel for the Plaintiff/Respondent applied Viva Voce for leave to amend the relief claimed at Page 4 of the Record for the amount Le2,544,898 to be amended to read Le26,452,542 Pursuant to Rule 32 of the Court of Appeal Rules Public Notice No. 29 of 1985 and Order 58 Rule 9 in the White Book of 1960. He submitted that there was sufficient evidence at the Trial to support the amendment sought. That the amendment is necessary so that the judgment and the evidence are not at variance.

Learned Counsel for the Defendant/Appellant opposed this application stating that it was a Ground of Appeal and that grave injustice will be done to the Appellant if the application for the amendment is granted at this stage.

It is an undoubted law that the Court of Appeal has an unfettered power to allow an amendment for the purpose of determining the real question in controversy between the parties to any proceedings or of correcting any defect or error in any proceedings if it can be done without injustice to the other side. In *CROPPER V. SMITH* (1884) 26 CH. DOWEN LJ had this to say at Page 710-711..... "It seems to me that as soon as it appears that the way in which a party has proved his case will not lead to a decision of the real matter in controversy it is as much a matter of right on this part to have it corrected, if it can be done without injustice, as anything else in the case is a matter of right."

The Application of Counsel for leave to amend the pleadings or the record is within the competence of this court to entertain but as to whether it will grant or refuse the application is another consideration depending on the circumstances See DAVIES V. BICKSETH 1964/66 ALR(S.L.) Page 403.

One of the issues settled by the pleadings is the pecuniary compensation to the Respondent for the loss suffered by the deprivation of his proprietary interest in the property the subject matter of the action.

From the record it is very clear that this issue has been ventilated by evidence at the Trial, and it must be patently obvious to Counsel for the Plaintiff, now Respondent, that an amendment to a pleading should have been made. An application for leave to amend therefore at this stage, having ~~fr~~ away the opportunity opened to them, in our view will work grave injustice to the Appellant which cannot adequately be compensated by costs. In the light of this the application is refused.

I agree..... *[Signature]* Hon. ^{Mrs.} Justice V.A.D. Wright

I agree..... *[Signature]* Hon. Mr. Justice N.D. Allaa

I agree..... *[Signature]* Hon. Mr. Justice M.E.T. Thompson