REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL CASE NO. xxxxx OF 2001

GEORGE TRANSPORTCO MPANY LTD …… PLAINTIF /APPLICANT

-V E R S U S-

ENTERPRISES LTD……DEFENDANT/RESPONDENT

CHAMBER SUMMONS

(Under Order VIA Rule 3(1), 5, 7 and 8 of the Civil Procedure Rules, Section 3A of the Civil Procedure Act Cap. 21 of the Laws of Kenya and all other enabling provisions of the law)

LET ALL PARTIES CONCERNED attend the Judge in chambers on the……day of ……2002 at 9 O'clock in the forenoon or so soon thereafter, for the hearing of an application by the Counsel for the Plaintiff **FOR ORDERS :-**

1. **THAT** the Plaintiff be granted leave to amend its Plaint filed herein On 20th April 2001, as per the draft annexed hereto.
2. **THAT** the draft Amended Plaint annexed hereto be treated as the Plaintiff's Amended Plaint and that the same be deemed as having been duly filed and served.

3. **THAT** the Defendant be at liberty to amend its Defence within 14 days thereafter if they so wish.

4. **THAT** the costs of this Application be in the cause.

WHICH APPLICATION is based on the grounds that: -

a) The Plaint dated 20th April 2001 contains a claim for cost of repairs to the Plaintiff's motor vehicle amounting to Kshs. 2,430,525.65

b) The said claim for cost of repairs has since been settled through the process of Arbitration between the Plaintiff and its insurers, Pan African Insurance Company Limited and a sum of Kshs. 1,317,279 paid to the Plaintiff.

c) The Plaintiff does not therefore wish to pursue this limb of claim.

d) The proposed amendments are intended to bring before this Honourable Court the real claim in dispute between the parties herein.

e) The proposed amendments will not occasion any prejudice to the Defendant.

AND WHICH APPLICATION is based on the annexed Affidavit of **DDDD** and on such other grounds and reasons as may be adduced at the hearing hereof.

DATED at Nairobi this day of 2002

XXXXX AND COMPANY
ADVOCATES FOR THE PLAINTIFF/APPLICANT

DRAWN AND FILED BY:

Xxxxx and Company
Advocates
MMMMM
Arboretum
P.O. Box xxxxx
Nairobi

TO BE SERVED UPON:-

xxxxxxx
Advocates,
8th Floor, Kimathi House,
Kimathi Street,
P.O Box xxxxxx,
Nairobi.

" If any party served does not appear at the time and place above-mentioned such order will be made and proceedings taken as the court may think just and expedient."

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO. xxxxx OF 2001

XXXXX TRANSPORT COMPANY LTD …. ..PLAINTIFF/APPLICANT

-V E R S U S-

XXXXX ENTERPRISES LTD …….DEFENDANT/RESPONDENT

AFFIDAVIT

I, **DDDD** of Kwarara Road, Karen Nairobi and of Post Office Box Number xxxxx Nairobi do make oath and state as follows:

1. **THAT** I am the Managing Director of the Plaintiff Company, I am well conversant with this matter and therefore competent to swear this affidavit.

2. **THAT** on or about 20th April 2001, the Plaintiff filed the suit herein, seeking judgement against the defendant in the total sum of Kshs 3,874,815.65 arising from the value of goods damaged, loss of user and the costs of repairing motor vehicle registration number XXXXX.

3. **THAT** the full details of the Plaintiff's claim against the Defendant are as more particularly set forth in the Plaint.

4. **THAT** I am advised by the Plaintiff's advocates on record Messrs. Xxxxx & Company which advice I verily believe to be true that the Defendant filed its Defence through its Advocates aforesaid on the 29th June 2001.

5. **THAT** prior to this suit, the Plaintiff had filed Arbitration proceedings against its Insurer, Pan Africa Insurance Company Limited claiming the sum of Kshs 2,430,525.65 being the cost of repairing motor vehicle registration number XXXXX

6. **THAT** on the 17th August 2001, the Arbitrator in the aforesaid Arbitration made an Award in favour of the Plaintiff for the sum of KShs. 1,317,279 being the cost of repairs incurred by the Plaintiff.

7. **THAT** in view of the fact that the Plaintiffs claim for repairs has since been decided and paid by its insurers, the Plaintiff does not wish to pursue this limb of the claim in this particular suit.

8. **THAT** I verily believe that it is in the interest of justice that the Plaintiff should be granted leave to amend its Plaint herein, so as to substitute the actual amount it wishes to claim in this suit.

9. **THAT** I verily believe that the proposed amendments will not occasion any prejudice to the Defendant.

10. **THAT** I swear this Affidavit in support of the Application for leave to amend the Plaint herein.

11. **THAT** what is deponed to hereinabove is true to the best of my knowledge

save as to matters deponed to on belief the grounds whereupon have been given and matters deponed to on information sources whereof have been disclosed.

SWORN by the said **DDDD**)
at Nairobi on this day of 2002
)
)
)
BEFORE ME)
)
)
COMMISSIONER FOR OATHS)

DRAWN AND FILED BY:

Xxxxx and Company
Advocates,
MMMMM,
Arboretum ,
P.O. Box xxxxx,
Nairobi.

TO BE SERVED UPON

xxxxxxx
Advocates,
8th Floor, Kimathi House,
Kimathi Street,
P.O Box xxxxxx,
Nairobi.