

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**

(LAND DIVISION)

MISCELLANEOUS APPLICATION NO.1799 of 2020

(ARISING OUT OF CIVIL SUIT NO.765 OF 2017)

1. ISRAEL MUGENYI

2. SARAH NANKYA:.....APPLICANTS

VERSUS

1. MAKERERE UNIVERSITY

2. COMMISSIONER LAND REGISTRATION

3. ATTORNEY GENERAL:.....RESPONDENTS

Before: Lady Justice Alexandra Nkonge Rugadya.

**RULING.**

**Introduction:**

This application was brought by Notice of Motion under **Section 98 of the Civil Procedure Rules Cap.71, order 6 rules 19 & 25 and order 52 rules 1, 2 & 3 of the Civil Procedure Rules S.I 71-3** for orders that the Applicant be permitted to file the amended plaint out of time and that costs of the Application be provided for.

**Grounds of the application:**

The grounds of the Application as laid out in the Notice of Motion are that:

1. *The applicant made their application to amend and serve the same with submissions to the respondents.*
2. *That the trial judge, ...ordered the parties to the application that the ruling in the said application would be given on notice.*
3. *That the trial judge delivered the ruling without notice to the applicants and was delivered through the internet by email because of the lockdown due to the COVID-19 pandemic and unaware of that mode of communication, the parties as well as their lawyers did not get the ruling until a routine check on the court file later revealed a hard copy of the ruling after its delivery.*

4. *That in the circumstances, the applicants could not file the amended plaint within the timelines given by court.*
5. *That it is in the interest of justice that the Applicants be allowed to file the pleadings out of time.*
- 5 6. *That the ruling had timelines within which too file the amended pleadings and that the same were not complied with.*

The application is supported by the affidavit of the applicant which amplifies the grounds, the detail, which I shall not reproduce here. Counsel for the applicants filed written submissions which I have also taken into consideration

- 10 As per the affidavit of service on record deposed by Mr. Kiggundu M Moses, the application was served onto the respondents. They did not oppose it.

**Consideration of the issue:**

- 15 **Order 6 rule 25 of the Civil Procedure Rules S.I 71-1** provides for situations, as the instant one, where leave is granted to the party to amend the pleadings within a limited time, but the party does not do so within the set time. In such a case, a party would not be allowed to amend unless the time is extended by court.

The court has wide discretion to allow the amendments to pleadings at any time, taking into account the following considerations

- 20 a. *The amendment should not occasion injustice to the opposite party;*
- b. *It should be granted if it is in the interest of avoiding multiplicity of suits;*
- c. *it should made, and be in good faith; and*
- d. *it must not be expressly or impliedly prohibited by law. See: Gaso Transported Ltd v. Martin Adala Obene, S.C.C.A. No. 4 of 1994.*

- 25 It has also been held that an amendment should be freely allowed; provided it is not made so late in the proceedings that it would be unjust to the opposite party, and that there would be no injustice if the other party can be compensated for by costs. **See: Eastern Bakery v. Castellino (supra); Wamayi v. Interfreight Forwarders (U) Ltd. [1990] II KALR 67.**

- 30 Further, it is now settled law that the major consideration in granting the application of this nature is whether or not it would be unjust or prejudicial to the opposite party; otherwise it should freely be granted. **(See: Steven Kigozi Makubya v Barclays Bank of Uganda Limited Miscellaneous Application No.66 of 2013).**

In the instant application, the respondents did not file any objection. Thus bearing in mind the above considerations I would accordingly grant leave to allow the application to amend the plaint, which is to be filed/served within two weeks after the date of delivering this ruling.

The amended defence is to be served/filed within two weeks after receiving the amended  
plaint..

The rejoinder, if any, to be filed after one week of receiving the amended defence.

Costs in the cause.

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**I so order.**



**Alexandra Nkonge Rugaadya**

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**Judge**

**27<sup>th</sup> September 2021.**

*Delivered via email*



*J*

*29/9/2021*