

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA
COMMERCIAL COURT DIVISION

HCT-00-CC-CS-0236-2006

JOHN KIBYAMI PLAINTIFF

VERSUS

MISSION AND RELIEF TRANSPORT LTD. DEFENDANT

BEFORE HON. MR. JUSTICE LAMECK N. MUKASA

RULING:

This suit was filed against Mission and Relief Transport Ltd, stated in paragraph 2 of the plaint to be a Limited Liability Company incorporated in Uganda.

When the case came up before me for a Scheduling Conference Mr. Suleiman –Musoke informed Court that Counsel for the defendant Mr. Daniel Rutiba, had informed him that there are two company's with similar names of the defendant. He therefore applied for an adjournment to verify the information. When the case came up again Mr. Musoke applied to amend the particulars of the defendant by deleting the word "limited"

Mr. Rutiba objected to the amendment sought. He argued that M/S Mission and Relief Transport Ltd, is a local company incorporated in Uganda while M/s and Missions and Relief Transport is a company incorporated in Netherlands only registered in Uganda under section 370, Part x of

the Companies Act as a Foreign Company carrying on business in Uganda. That the two were separate entities. His argument was that by the amendment the plaintiff was substituting the foreign company for the Ugandan Company. He therefore prayed that the suit be struck out under Order 6 rule 29 of the Civil Procedure Rules.

The plaintiff's claim arises from a hire agreement referred to in paragraph 4 (a) of the plaint and annexed to the plaint as annexure A. The agreement it is between the plaintiff and Mission & Relief Transport. In the signature part of the agreement it is signed for Mission & Relief Transport Uganda but with a stamp for Mission and Relief Transport, Great –Lakes Region Office P. O. Box 10439, Kampala. Therefore, the plaintiff knew the party whom he was dealing with in the agreement which gives rise to this suit as Mission and Relief Transport. The existence of another party with a similar name Mission and Relief Transport Ltd was only brought to the attention of the plaintiff's counsel by the defendant's counsel.

The circumstances of this case show that the inclusion of the word "Ltd" in the name of the defendant was merely an error most probably committed by Counsel since the agreement supplied to him as the basis of the plaintiff's claim was between the plaintiff and Mission and Relief Transport. In JB Kohli & Others Vs Bachulal Popatlal (1964) EA 219 it was held that where a reasonable man reading all the documents in the proceedings before Court and having regard to all the circumstances would entertain no doubt as to the person to be sued it would be a case of misnomer. In the circumstances of this case there is no doubt that the defendant, in view of the agreement attached to the plaint is Mission and Relief Transport. An error which is a mere misnomer can be corrected by amendment. The law as regards amendment of pleadings was discussed in detail by Ntabgoba PJ in Edward Seninde Vs Fred Luwaga (1995) IV KALR 149 where it was held, inter alia, that most importantly an amendment may be allowed at a very late stage, where it is necessitated solely by a drafting error and where there is no element of surprise. In the instant case the error was a drafting error and there is no element of surprise since it was the defendant's Counsel who pointed out to the plaintiffs Counsel the existence of another entity with more or less a similar name.

I accordingly allow the application to amend the plaint as sought by stricking out the word “Limited” from the defendant’s name. Costs shall be in the course of the suit.

Hon. Mr. Lameck N. Mukasa

Judge

6th December, 2006