

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
COMMERCIAL COURT DIVISION

HCT-00-CC-MA-0421-2008
(Arising out of HCT-00-CC-CS-0726-2007)

FRANCIS BRAKE LUBEGA APPLICANT

VERSUS

BARNABAS TAREMWARESPONDENT

BEFORE: HON. JUSTICE LAMECK N. MUKASA

RULING

This is an application brought by Chamber Summons under Order 6 rules 18 and 30 of the Civil Procedure Rules and Section 98 of the Civil Procedure Act. The Applicant is seeking leave to amend his pleadings.

When the application came before me for hearing Mr. Enos Tumusiime raised three preliminary objections. First that the application for amendment of pleadings was wrongly brought under Rule 18 of Order 6 of the Civil Procedure Rules, as the rule is about striking out unnecessary matter. Secondly, that the amendment sought is intended to transform or change the Applicant's claim in the main suit. And thirdly that the Applicant is relying on Civil Suit No 107 of 2008 between Haji Asuman Jjunju & Sons Ltd Vs Banabas Taremwa (the Respondent in this application) which suit had already been withdrawn by the time this application was filed.

The second and third grounds of objection go to the merits of the application. I will therefore not consider them at this stage. As to the first ground this application is brought under Order 6 rule 18 of the Civil procedure Rules. I agree with Counsel for the Respondent that the rule concerns striking out, but it also includes amendment, of any matter in pleadings which may be unnecessary or scandalous or which may tend to prejudice, embarrass or delay the fair trial of the action. In the instant application the amendment sought is to plead particulars of fraud in the Written Statement of Defence. Such an amendment can only be under rule 19 of the Order which states:-

“The court may, at any stage of the proceedings, allow either party to alter or amend his or her pleadings in such manner and on such terms as may be just and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties.”

In the circumstances the Respondent contends that the application be struck out. In his reply Mr. Adam Kirumira, Counsel for the Applicant, did concede that the application should have been under rule 19. He prayed that court disregards the error under the provisions of Article 126 of the constitution and allow the application to proceed on merit.

Article 126 (2) (e) of the Constitution requires court to administer substantive justice without undue regard to technicalities. In *Alcon International Vs Kasirye Byaruhanga & Company Advocates (1995) III KALR 91* Justice Musoke Kibuuka held that procedural defects can be cured by the invocation of Article 126 (2) (e) of the Constitution. In *Intraship (U) Ltd Vs G. M. Combine (U) Ltd (1994) VI KALR 42* Justice Sempa Lugayizi found that the application had been brought under the wrong law. Considering whether the application should in the circumstances be struck out his Lordship held that the question should be whether the irregularity is serious enough to prevent the court from hearing the application and determining it on its own merits. That the answer would

depend on whether the non-observance of the procedural rule in issue would lead to injustice. If it would not lead to injustice the Court would be willing to overlook it, otherwise it would not.

An application under rule 19 of Order 6 shall be by summons in Chamber. See Order 6 rule 31 CPR. This application was brought by Chamber Summons, the right procedure for an application to amend pleadings under rule 19. It is only that the wrong rule for the application and wrong procedural rule were quoted. Save for the wrong rules quoted the application is clearly seeking an amendment of pleadings and brought by the right procedure. In the premises I find that if this application if allowed to proceed on its merit no injustice will be caused to the Respondent. Accordingly the objection is overruled. The application will proceed on merit. Costs shall be the cause of the main application.

Hon. Mr. Justice Lameck N. Mukasa

JUDGE

5th February, 2009