

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL COURT DIVISION)**

**HCT - 00 - CC - MA - 504 – 2010
(Arising from High Court Civil Suit 004 of 2009)**

GODFREY SENTONGO ::::::::::::::::::::::::::::::::::::::: APPLICANT

VERSUS

CENTENARY RURAL DEVELOPMENT BANK LTD ::::::::::: RESPONDENT

BEFORE: THE HON JUSTICE GEOFFREY KIRYABWIRE.

Ruling

This is an application by way of chambers summons under Order 6 rules 19 and 31 of the Civil Procedure Rules (CPR) for leave to amend the plaint in High Court Civil Suit 004 of 2009. The application is supported by the affidavits of Mr. Godfrey Sentongo and Mr. Joseph Balikudembe co-counsel for the applicants in the main suit.

Mr. Godfrey Lule (sc) appeared for the applicants while Mr. Masembe Kanyerezi appeared for the Respondent bank.

The grounds of the application are that following the filing of the suit, there have been new events that have necessitated the amendment of the plaint. Furthermore the applicants have discovered new facts that were previously unknown to them. Further grounds are that the amendments are necessary to enable court decide the real issues in the suit and that they will not prejudice the Respondent.

Like I found in Miscellaneous Application No. 528 of 2010 **Muddu Awulira Enterprises Ltd & 2 Ors Vs Stanbic Bank**, this application is one of the three others which involve the second Applicant and his companies against several banks that called in their loans that the Applicant companies had taken. In all three cases, the Applicants contest the acts of the banks.

In this particular application, it is the case of the Applicants that when their new counsel Mr. Balikudembe took over conduct of the suit from the previous counsel Mr. David Mpanga. He discovered several acts of bad faith in the conduct of the receivership which were characterized by recklessness, willful default and fraud. It is the case of the Applicants that these are new facts that necessitate an amendment to the Applicant/Defendant's defence and counter claim.

Counsel for the Respondents opposed the amendments noting as he did before that these were old matters. He further submitted that even though he had been promised by the new defence counsel a draft amended pleading, it was only handed to him at the time of the hearing of this application 6 months later which is evidence of dilatory conduct of counsel in dealing with the matter which should not be allowed.

The legal arguments in this application are not substantially different from what is presented in Miscellaneous Application No. 528 of 2010 **Muddu Awulira Enterprises Ltd & 2 Ors V Stanbic Bank** for which I have already given a detailed ruling.

In that case, I found that two main considerations should be taken into account in granting an amendment. First is that; it should be necessary for the purpose of determining the real questions in controversy between the parties. Secondly, that an amendment should not be allowed if it causes injustice to the other side.

In this case like the **Muddu Awulira Enterprises Ltd** case (supra), it would appear to me that the amendment is more lengthy than the original defence and counterclaim. However, the cause of action remains the same.

The bulk of the amendments relate to special damages in the counterclaim which will in any case have to be strictly proved.

The only danger I see is that; some of the averments look like evidence which should be cleaned up.

As to dilatory conduct, I know that court was notified about counsel Balikudembe's medical challenge and I would in those circumstances give him the benefit of the doubt.

All in all, I find that this is a proper case to allow an amendment so that this matter is put down for trial to resolve this long standing matter once and for all.

Leave to amend is granted and the Applicant is given 7 days from this ruling to do so. Costs in the cause.

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Geoffrey Kiryabwire
JUDGE

Date: 20/10/2010

20/10/2010

09:44 a.m.

Ruling read and signed in open Court in the presence of:

- G.S Lule (sc) and Walebeyhi for Applicants
- Masembe Kanyerezi for Respondent
- Applicant
- Ruth Naisamula - Court Clerk

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Geoffrey Kiryabwire

JUDGE

Date: 20/10/2010