

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

(ARISING FROM HCCS NO. 84 OF 2017)

- a) That in a suit filed as Civil Suit No. 84 of 2017 the Applicants sought among others an order against the 1<sup>st</sup> Respondent to cancel a mortgage on the suit land and deliver duplicate certificate of title to them.
- b) That the 2<sup>nd</sup> Applicant has since withdrawn from the matter and should therefore be struck off as well as the 5<sup>th</sup> Respondent.
- c) That at the time of filing the plaint there were material facts not available to the Applicant and were thus not pleaded in the plaint.
- d) That it is desirable and important that all matters in controversy be pleaded in court in order to reach a just and fair finding
- e) That the pleadings in the first place were badly done.
- f) That the Respondents would suffer no prejudice.

When this matter came up for hearing the court found the Application so wanting that it dismissed it and reserved the reasons for this Ruling. The brief background is that the two Applicants filed suit No. 84 of 2017 against the Respondents seeking nullification of a mortgage on the ground that it was fraudulently obtained.

They also sought among other things aggravated damages, punitive damages, general damages and interest on all of them. On the 26<sup>th</sup> May the Plaintiff in civil suit 84 of 2017 now Applicants in this Application filed this Application to amend the plaint and gave the grounds I have earlier enumerated in this Ruling.

One of the grounds for the amendment was that since the 2<sup>nd</sup> Applicant had withdrawn from this matter he should be struck off from the plaint. Furthermore, the 5<sup>th</sup> Respondent who was also the 5<sup>th</sup> Defendant should be struck off. Interestingly, although the 2<sup>nd</sup> Applicant had been named as a party to this Application and the plaint he did not file any affidavit in support of this Application. The Application shows that this was the 1<sup>st</sup> Applicant's doing. There is nothing to show that the 2<sup>nd</sup> Applicant had empowered the 1<sup>st</sup> Applicant to apply to have him struck off the record.

In any case for the 2<sup>nd</sup> Applicant to be struck off the record it was upon himself to put in an application, subject to issues of costs. I find that this Application was unilaterally done by the 1<sup>st</sup> Applicant. It has no basis anywhere in the law and cannot be sustained. The Applicants also sought an order striking off the 5<sup>th</sup> Respondent from the record. I again find this strange. The

only way the Applicant could have proceeded was under Order 25 of the Civil Procedure Rules by way of withdrawal in which case the Applicant would be saddled with costs.

From the foregoing, this ground as a step towards amendment of pleadings was misconceived and therefore fails.

The Applicants further state that at the time of filing the plaint there were material facts that were not known to them. In an Application such as this one the Applicants should state those material facts that they say were not available to them at the filing of the plaint.

These should be in the affidavit supporting the Application and should be highlighted in the proposed amended plaint which should be attached on the Application.

Interestingly although the Chamber summons stated that there was an attached proposed amended plaint it was never attached. The Chamber summons was filed on 26<sup>th</sup> May 2017 without the proposed amended plaint. I have also carefully and thoroughly perused the affidavit of the 1<sup>st</sup> Applicant filed in support of this Application, nowhere does the Applicant state those material facts that were allegedly discovered after filing the plaint. Under those circumstances the ground that the Applicants became aware of new material facts can also not stand.

Having found both those grounds in the negative it is my finding that this Application fails to meet the requirements of an Application seeking amendment. It is misconceived and must fail. The same is therefore dismissed with costs.

**Dated at Kampala this 5<sup>th</sup> day of July 2017.**

**HON. JUSTICE DAVID WANGUTUSI  
JUDGE OF HIGH COURT.**