

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL DIVISION)
MISC. APPLICATIONNO. 1229 OF 2017
(ARISING FROM CIVIL SUIT NO. 552 OF 2014)

ORIENT BANK LIMITED:.....:APPLICANT

VERSUS

KAMPALA INTERNATIONAL UNIVERSITY:.....:RESPONDENT

BEFORE: THE HON. JUSTICE DAVID WANGUTUSI

RULING:

Orient Bank Limited, called the Applicant in these proceedings seeks leave to amend its Written Statement of Defence in a suit brought against it by Kampala International University, herein the Respondent.

Whereas in the earlier pleadings, only the Applicant was the Defendant, she now seeks leave to join M/s Deo & Sons Ltd, Haba Group Ltd, First Merchant Traders Ltd, Hajati Azida Nanteza Basajjabalaba and Siraj Tumwine as Defendants to the suit.

The Applicant also seeks leave to include a cross-action against the added Defendants and add Mr. Hassan Basajjabalaba as a Counter Defendant being a guarantor of the facilities to the Respondent.

The Applicant contends whatever transaction she did in respect of the Respondent's account, was sanctioned by the Respondent.

That the Respondent and Mr. Hassan Basajjalaba authorised the Applicant to debit its accounts in favour of the intended Defendants.

In the intended amended defence, the Applicant has endeavored to show the money advanced to the intended Defendants on what she alleges was authorised by the Respondent and Mr. Hassan Basajjalaba.

In reply, the Respondent objects to the addition of the intended Defendants on the grounds that the Respondent has “not pleaded material facts/grounds that would satisfy the guiding principles or known tests for amendment and addition of a party as Defendant.”

That since the only thing to be determined in the suit was whether the impugned transactions on the Respondent’s account were authorized by the Respondent, it was not necessary to add other Defendants, but only produce the authorizations that sanctioned the transactions.

Further, that adding the intended Defendant, would unnecessarily compel the Respondent, to create a cause of action against them which would attract unnecessary costs.

I have perused the pleadings including the intended amendment and it is apparent that the Applicant seems to paint a picture of a Respondent, who stood in for the intended Defendants, an act that created indebtedness on the Respondent.

I also see an attempt by the Applicant to show that the explanation for the astronomical figures it claims the Respondent owes it, lies in her relationship with the intended Defendants.

In my view, the other way that the Applicant would proceed against the intended Defendants, would be to file a suit against them joining them with the Respondent and Mr. Hassan Basajjalaba. That would mean another suit. This multiplicity of suits can in my view be avoided by joining the intended Defendants at this stage.

In my view joining them would not prejudice the Respondent but would instead save her from appearing in another suit. Furthermore, this being a financial institution any injustice occasioned to the Respondent by the joinder of other parties would be compensated by way of costs.

Furthermore, going by the pleadings, I do not see the introduction of any new and distinct matter, but rather a result which will explain whatever transactions or anomalies took place on the Respondent’s account.

The sum total is that the amendment sought will lead to resolving the matter to totality and prevent multiplicity of suits which would be more expensive to the parties by way of time and money.

The orders sought are therefore granted. Costs shall abide the results of the main suit.

Dated at Kampala this 20th of February 2018

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Justice David K. Wangutusi

JUDGE