THE REPUBLIC OF UGANDA,

IN THE HIGH COURT OF UGANDA AT KAMPALA

(COMMERCIAL DIVISION)

MISCELLANEOUS CAUSE NO. 41 OF 2018

1. OPECPRIME PROPERTIES LTD

2. OPECPRIME PROPERTIES (U) LTD..... APPLICANTS

VERSUS

ATTORNEY GENERAL ..... RESPONDENT

BEFORE: HON. MR. JUSTICE RICHARD WEJULI WABWIRE

R U L I N G

When this matter came up for hearing on 20/9/18, Counsel for the Applicants made an Oral Application for amendment of their Chamber Summons to introduce one additional prayer seeking to restrain the Attorney General (AG) from evicting the Applicants from the Project property.

The proposed amendment reads as follows;

" d) An interim measure of protection and (or) an injunction doth issue restraining the Government of the Republic of Uganda, its agents

and (or) servants from evicting or otherwise interrupting the quiet possession and ownership of the 2nd applicant of all that land known and comprised in ……(which altogether comprise the Nakawa-Naguru satellite Town Project), till the hearing and final determination of the arbitration of the dispute between the Applicant and the Respondent".

An additional ground No 8 introduced to give context to the Application reads as follows;

"The Government of the Republic of Uganda has, without any colour of right or lawful excuse at all threatened to evict the 2nd Applicant and also demanded that it vacates the Nakawa-Naguru Satellite Town Project land in respect of which the latter is the registered proprietor and in firm possession".

The grounds for the Application are that;

i. the AG has, after this Application was filed, threatened the Applicant with eviction from the project property.
ii. to ensure that the threat of eviction is considered so that the dispute is effectively determined as the Government of the Republic of Uganda has, without lawful excuse at all threatened to evict the 2nd Applicant and also demanded that it vacates the Nakawa-Naguru Satellite Town Project land in respect of which the latter is the registered proprietor and in firm possession

iii. to avoid a multiplicity of suits and that the amendment if allowed, will not prejudice the Respondent/AG and that in any case any prejudice that could arise can be atoned for in costs

Counsel for the Applicants cited the case of D.D Bawa Limited Vs G.S Didar Singh [1961] E.A 282 to support his position that the amendment could be made orally. There was no contest to this position by the Respondents. I agree with the position in the case of D.D Bawa Limited Vs G.S Didar Singh [1961] E.A 282 which Counsel relied on to support his grounds for proceeding by Oral Application. The Application is therefore properly before court.

Counsel appearing for AG objected to this amendment and invited court to consider the long established principles and guidelines that must be taken into account before allowing amendments. She did outline which ones they are. The AG submitted that the Applicant, when arguing his Application for an interim order before the Registrar, had made the same prayer as has been proposed in the amendment and it was denied because it had not been included in the Application.

The AG argued that the proposed amendment was an afterthought, an abuse of court process, and would cause injustice to the Respondent (AG) if allowed.

In Rejoinder the Applicants submitted that the learned Counsel for the AG had not disagreed with the fact that if allowed the Application

would lead to avoidance of a multiplicity of suits and that the AG had been put on Notice about the Application.

I listened to the brief submissions by Counsel for both parties and have also addressed myself to the relevant authorities and laws on amendment of pleadings and will now address the merits of the application.

Order 6 r 19 of the CPR gives court discretion to allow either party to amend their pleadings in such manner as may be just and as may be necessary for the purpose of determining the real questions in controversy between the parties.

The broad principles and guidelines on amendment of pleadings, which I believe learned Counsel for AG alluded to, were laid down in the case of GASO Transport Services Limited Vs Adala Obene CA 4/1994. The Justices of Appeal held that the following principles and guidelines ought to be taken into account when exercising discretion to allow amendment of pleadings;

1. The amendment should not occasion injustice to other side. But that however if the injustice can be atoned for in damages then this may not curtail the discretion of court to allow amendment.
2. Multiplicity of proceedings must be avoided as far as possible and all amendments which would avoid such multiplicity should be allowed.

3. An Application made mala fide should not be granted.
4. No amendment should be made where it is expressly prohibited by law.

Whether amendment can be made at this stage

Order 6 rule 19 bestows discretion upon court to allow amendment of pleadings at any stage of the proceedings. The discretion is however tempered by the guidelines and principles to check abuse and stem the risk of miscarriage of justice.

The Courts have reaffirmed this n several cases, the leading authority in this jurisdiction being the case of **GASO Transport Services Limited Vs Adala Obene CA 4/1994** where the Justices stated that the High Court had discretionary powers to grant amendment of pleadings at any stage of the proceedings and in appropriate cases.

The Justices further stated that the Courts are more flexible in allowing amendments whenever the Applications are made promptly at the earliest stage in litigation. The more advanced the litigation the greater the burden of the Applicant to satisfy court that leave be granted.

Whereas the parties have filed all there Pleadings, thus far, the Main Application has not yet been heard. The Application to amend was made at the first hearing of the Main Cause.

Whether amendment if granted will occasion an injustice.

I listened to the submissions made by both Counsel regarding the issue of injustice. Whereas Counsel for the AG alluded to injustice being occasioned if the amendment is allowed, she made no elaboration on how and what kind of injustice she envisioned.

I however take the position that the grant of amendment is not a *fait accompli* that the (new) prayer once included in the Application is granted. The matter would still be subject to be heard on the facts as they are on record.

Be that as it may, the position of the law is that if the nature of the proposed amendment is such that if granted, it would occasion an injustice or injury such as denying the Respondent access to or the benefits from project property, then a question should be posed as to whether this can possibly be atoned for in costs.

This position was upheld in the case of **Eastern Bakery Vs Castelino [1958] 1 EA 461** in which court similarly held that amendments to pleadings sought before the hearing should be freely allowed if they can be made without injustice to the other side, and there is no injustice if the other side can be compensated in costs.

However, in such circumstances, the onus is on the Respondent to prove that the prejudice anticipated cannot be atoned for in damages or costs.

In the instant case the learned AG made no effort to do so. She only made a cursory reference to it. I am therefore not convinced that to allow the amendment as prayed would occasion any injustice on the Respondents.

Whether the amendment if granted would prevent a multiplicity of suits.

The underlying motivation for allowing amendments is to enable determination of the real questions of controversy between the parties.

The Applicants Counsel submitted that it was after the Application had been filed that the Applicants received a letter on the 9th August 2018 from the AG terminating the PPP Agreement between the Applicant and the Government of Uganda for the Construction of the Naguru satellite city.

The Applicant further submitted that part of the motivation for this Application was to bring forth issues arising from the threatened eviction which in my opinion is necessary for the purposes of determining the real questions in controversy between the parties so that an effective and complete determination of the dispute is realised without having to file other causes to address the issue of threat of eviction.(see Eastern Bakery Vs Castelino [1958] 1 EA 461).

I agree with Counsel for the Applicants that the amendment will placate the possibility of other suits being filed on the same facts, seeking the same remedies as those proposed to be introduced by the amendment.

Whether the proposed amendments are lawful.

I am not aware of any laws that this the proposed amendment offends. I have no reason to believe that the Applicants have brought the prayer to amend and the proposed amendment in bad faith but rather to ensure a complete resolution of the dispute between them and the Respondent.

The Application succeeds. The Applicant is grated leave to amend the pleadings as prayed.

The Applicants should file their amended pleadings within 5 days from the date hereof and the Respondent will, if they so wish, reply in accordance with the Rules of procedure.

Ruling delivered in open Court this 5th day of October 2018.

Richard Wejuli Wabwire

JUDGE