



THE REPUBLIC OF UGANDA

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

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**MISCELLANEOUS APPLICATION No. 969 OF 2020
(ARISING FROM CIVIL SUIT No. 841 OF 2018)**

10 **SPACE MARKETING UGANDA LIMITED..... APPLICANT**

VERSUS

<p>15</p> <p>1. EQUIFAX UGANDA LIMITED</p> <p>2. OUMO ROBERT EJIET</p> <p>3. APENDU JONATHAN</p> <p>4. JAMES EJIET</p> <p>5. IJERA MOSES</p>	}	<p>..... RESPONDENT</p>
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20 **BEFORE HON. JUSTICE RICHARD WEJULI WABWIRE**

RULING

25 This Application was brought under the provisions of Section 33 of the
Judicature Act, Section 98 of the Civil Procedure Act Cap 71, Order 1 Rules
3 & 10 and Order 6 rule 19 & 31 of the Civil Procedure Rules S.I 71-1 (CPR)
for the following Orders and for costs of the Application, namely:-

- 30 i) *That leave be granted to the Applicant/Plaintiff to add the 2nd Respondent as a party to Civil Suit No. 841 of 2018 to amend its pleadings.*
- ii) *That leave be granted to the Applicant/Plaintiff to amend the plaint in Civil Suit No. 841 of 2018*
- 35 iii) *That the Applicant recovers UGX 173,000,000/= (Uganda Shillings One Hundred Seventy-Three Million Only) against the Respondents severally and jointly*

40 The Application is supported by an Affidavit sworn by Mr. Baylon Kizito in his capacity as the director of the applicant company.

The grounds of the Application as contained in the chamber summons and the Affidavit in support were, briefly, that since the filing of the Plaint the Applicant/Plaintiff has obtained more pertinent facts which arose
45 subsequent to the filing of the suit, and which materially affect the reliefs sought by the Plaintiff/Applicant thereby necessitating the amendment of the Plaint. That the 2nd Respondent as a director in the 1st Respondent is necessary as a defendant in the head suit and his presence is vital to enable Court effectually and completely adjudicate and determine the matter to its
50 finality.

A copy of the proposed Amended Plaint showing the nature of amendments sought to be made primarily in paragraphs 4, 5, 8, 9 and under prayers in paragraph (a) was annexed to the Affidavit in support of the Application as
"A".

55 An Affidavit in reply/rebuttal was sworn by Mr. Oumo Robert Ejiet, the 2nd Respondent.

He deposed in paragraph 3 that he was advised by his lawyers M/S. Century Advocates that the third prayer on the Applicant's chamber summons is
60 misconceived as this would violate the Respondents' constitutional right to a fair hearing. The Application is frivolous and vexatious as it seeks to add the 1st Respondent as a party to Civil Suit No. 841 of 2018 yet she is already a party to that suit as stated in paragraph 2 of the Affidavit in support. The Application has no merit and is only intended to waste court's time and put
65 the Respondent to the unnecessary burden of defending it and should be dismissed with costs.

The 2nd Respondent also contended that that he cannot be sued on contracts he was not a party to, and this would contravene the doctrine of privity of
70 contract. That he was informed by his lawyers that the 1st Respondent is a body corporate and distinct from the 2nd Respondent and the 2nd Respondent can not be sued or held liable for the actions of the 1st Respondent. That the Applicant has not even stated the particular fact that arose after filing the suit which prompted her to seek an amendment to increase the amount of
75 money claimed. That granting of the Application will occasion an injustice since the Applicant who entered into the contract with the 1st Respondent is now seeking to tactfully shift liability to the 2nd Respondent by adding him as a party to the suit, suing him in his individual capacity which is an illegality.

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Both parties filed written submissions which I have considered as well as the authorities they referred to. I will briefly highlight the gist of the arguments advanced in the said submissions.

85 Counsel for the Applicant submitted that under Order 1 Rule 3 of the Civil Procedure Rules S.I 71-1 all persons may be joined as defendants against

whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist whether jointly, severally or in the alternative where if separate suits were brought against those persons any common question of law or fact would arise. Counsel argued that the 2nd Respondent is a director of the 1st Respondent and consequently the 2nd Respondent is a necessary party as a defendant in the head suit whose presence is vital to enable Court effectually and completely adjudicate and determine the matter to its finality. He submitted that the aim is bring on record all persons who are parties relating to the subject matter before Court so that the dispute may be determined in their presence and at the same time without any frustration, inconvenience and also to avoid a multiplicity of proceedings.

Counsel for the Applicant also submitted that the Applicant seeks to amend the pleadings to increase the sum earlier pleaded in the plaint from UGX 148,000,000/= to UGX 173,000,000/=. He argued that this is premised on the fact that since the filing of the plaint and issuance of summon to file a defence, the Applicant has obtained more pertinent facts which arose subsequent to the filing of the suit and which materially affect the reliefs sought by the Applicant/Plaintiff thereby necessitating the amendment of the Plaint. Counsel further submitted that in the Plaint the outstanding sum due was wrongly stated to be UGX 148,000,000/= and not the actual UGX 173,000,000/= which is clearly stated in the proposed Amended Plaint after deducting off the sums paid by the Respondent. He argued that the amendment is necessary for determination of the real question of controversy between the parties and it would in no way prejudice the Respondent if the same is not allowed.

115 In reply Counsel for the Respondent submitted that allowing the Applicant
to sue the director of the 1st Respondent Company will infringe the company
law doctrine and will be sanctioning an illegality. He argued that Order 1
Rule 3 of the CPR cited by Counsel for the Applicant applies where the
Applicant has a right of relief against the person sought to be added. That
120 the Applicant in the present case has no right of relief against the 2nd
Respondent who was not a party to the contracts that are the subject of the
main suit

In regard to the prayer for an order directing the Respondents to pay UGX
125 173,000,000/=, he submitted that the prayer is misleading because it seeks to
get a conclusive order from the Court at a premature stage before Hearing
of the main suit. He prayed that this Application is dismissed with costs.

Order 6 rule 19 under which this Application was brought provides that:-

130 *“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 maybe necessary for the purpose of determining the real
questions in controversy between the parties”.*

135 As per the wordings of this rule, grant of an Application for amendment of
pleadings is discretionary and I am mindful of the fact that this discretion is a
judicial one which must not be exercised arbitrarily.

140 According to *Mulla , The Code of Civil Procedure, 17th Edition Volume 2, at
pages 333, 334 and 335*; as a general rule, leave to amend will be granted so
as to enable the real question in issue between the parties to be raised on the
pleadings, where the amendment will occasion no injury to the opposite

145 party, except such as can be sufficiently compensated for by costs or other terms to be imposed by the order. Leave to amend must always be granted unless the party applying was acting mala fide and where it is not necessary for determining the real question in controversy between the parties, the Application to amend must be made bona fide and made in good faith.

150 *Odgers on Pleadings and Practice 20th Edition at page 170* also states that where the amendment is necessary to enable justice to be done between the parties, it will be allowed on terms even at a late stage. However, if the Application be made mala fide, or if the proposed amendment will cause undue delay, or will in any way unfairly prejudice the other party, or is
155 irrelevant or useless, or would raise merely a technical point, leave to amend will be refused.

There are a number of cases that have followed the above principles that govern amendment of pleadings. In *Gaso Transport Services (Bus) Ltd v Obene [1990-1994] EA 88 Tsekooko*, JSC stated that the four principles that
160 appear to be recognized as governing the exercise of discretion in allowing amendments are:-

165 *i) The amendment should not work injustice to the other side. An injury which can be compensated by an award of costs is not treated as an injustice.*

ii) Multiplicity of proceedings should be avoided as far as possible and all amendments which avoid such multiplicity should be allowed.

170 *iii) An Application which is made mala fide should not be granted.*

iv) No amendment should be allowed where it is expressly or impliedly prohibited by any law (for example limitation actions).

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In the above cases much emphasis was placed on the fact that the amendment should be freely allowed provided it is not done mala fide and does not occasion prejudice or injustice to the other party which cannot be compensated by award of costs.

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In the instant case, I must point out that the drafting of the orders sought in the Chamber summons was poorly done and confusing to the say the least. However, from what I could discern from the Application filed, the Applicant seeks to amend the Plaint to add parties and clarify on the amount of money claimed.

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Applying the principles governing amendment of pleadings to the facts of this case and taking into consideration the Affidavits and the submissions of both counsels. My considered opinion is that the amendment being sought is misconceived and misrepresented. First, the Applicant did not avail sufficient grounds as to why the directors of the 1st Respondent should be added as parties to the main suit. Secondly, the Applicant is seeking for an order that she recovers UGX 173,000,000/= (Uganda Shillings One Hundred Seventy-Three Million Only) against the Respondents severally and jointly. It is my finding that this particular amendment being sought is misconceived and the same cannot be granted at this stage of the proceedings.

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However, I believe that the Applicant could have intended to seek for an order allowing her to clarify on the amount claimed in the main suit from UGX 148,000,000/= to UGX 173,000,000/=. In *Gasu Transport Services (Bus) Ltd v Obene (Supra)* Tsekooko, JSC observed that multiplicity of

proceedings should be avoided as far as possible and all amendments which avoid such multiplicity should be allowed. Similarly, according to Mulla , The Code of Civil Procedure, 17th Edition Volume 2, at pages 333, 334 and 335; as a general rule, leave to amend will be granted so as to enable the real question in issue between the parties to be raised on the pleadings. It is my considered opinion that allowing the Applicant to clarify on the amount claimed in the main suit will avoid a multiplicity proceedings and it will enable this honourable Court to determine the real question in issue between the parties with finality.

In the premises, for the reasons given hereinabove in this ruling, this Application has partially succeeded only in respect of amending the plaint to clarify on the amount of money claimed by the Applicant/Plaintiff against the Defendants in the main suit, and I accordingly issue the following orders:-

1. The Applicant is hereby allowed to amend the Plaint in Civil Suit No. 841 of 2018 to clarify on the amount of money claimed against the Defendants.
2. The Applicant/Plaintiff shall file the Amended Plaint in Civil Suit No. 841 of 2018 as guided in (1) above within a period of 15 days from the date hereof and the Defendants shall subsequently file their reply to the amend plaint (if any) within 15 days from the date the Amended Plaint is served upon them.
3. The rest of the orders sought by the Applicant herein are denied and accordingly dismissed.

4. Each party shall bear its own costs.

I so order.

235 Delivered at Kampala this 15th day of November 2020.

Richard Wejuli Wabwire

240 **JUDGE**