

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

**MISCELLANEOUS APPLICATION No. 0695 of 2019**

5 **(Arising from Civil Suit No. 0616 of 2014)**

**AMIT JAIN ..... APPLICANT**

**VERSUS**

10 **HON. LOKII PETER ABRAHAMS ..... RESPONDENT**

**Before: Hon Justice Stephen Mubiru.**

**RULING**

15a. Background.

The applicant sued the respondent under summary procedure seeking recovery of shs. 335,175,000/= The applicant's claim is that he is a licenced money lender who on or about 22<sup>nd</sup> September, 2012 lent a sum of shs. 265,000,000/= to the respondent at a monthly rate of interest of 2% The respondent defaulted on repayment of that loan and by the time of filing the suit interest thereon had accumulated up to a sum of shs. 70,175,000/= The loan was evidenced by a memorandum of understanding, a promissory note, post-dated cheques, three motor vehicle log books deposited with the applicant and a letter of acknowledgement dated 2<sup>nd</sup> August, 2013.

25 The respondent having been granted leave to appear and defend the suit, indicated that he would raise a preliminary objection regarding the applicant's capacity to sue since the applicant was described in paragraph 1 of the plaint as a limited liability company, whereas not. The respondent denied having entered into any contract with the applicant. The applicant had custody of the motor vehicle logbooks and cheques for a different purpose only that he chose to associate them with a  
30 non-existent loan advanced to the respondent.

b. The application.

5 The application is made under section 33 of *The Judicature Act*, section 98 of *The Civil procedure Act*, and Order 6 rules 19 and 31 of *The Civil Procedure Rules*. The applicant seeks leave to amend that part of the plaint by which he is described as a limited liability company, an artificial person, to indicate instead that he is a natural person. He attributes the mis-description to a drafting error made by his counsel.

10c. The affidavit in reply

The respondent did not file an affidavit in reply.

d. Submissions of counsel for the applicant

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Counsel for the applicant, M/s Pearl Advocates and solicitors, submitted that describing the applicant as a limited liability company was as a result of human an error when drafting the plaint. The error was not realised until the respondent had foiled his written statement of defence. It is in the interest of justice that the application is allowed since the respondent is unlikely to suffer any  
20 prejudice as a consequence of the amendment sought.

e. Submissions of counsel for the respondent.

Counsel for the respondent, M/s Alaka and Co. Advocates never filed any submissions in response.  
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f. The decision.

Order 6 rules 9, 18 and 31 of *The Civil Procedure Rules* give the Court a wide discretion to allow either party, at any stage of proceedings, to alter or amend his or her pleadings in such a manner  
30 and on such terms as may be necessary for the purpose of determining the real question in controversy as between the parties. The paramount guiding principle in the exercise of this

discretion is that the intended amendment should enable court to determine the real questions in controversy between the parties, without causing injustice to the other party. An injury which can be compensated by the award of costs is not an injustice (see *Gasu Transport Services (Bus) Ltd v. Obene* [1990-94] EA 88). Multiplicity of proceedings should be avoided as far as possible and all amendment which avoid such multiplicity should be allowed. The proposed amendment should enable justice to be done between the parties. An amendment for example will not be allowed if it renders the defendant's defence of limitation useless (see *Nzirane v. Matiya Lukwago* [1971] HCB 75 and *Eastern Bakery v. Castelino* [1958] EA 641); or introduces a new cause of action that would change the action into one of a substantially different character (see *Muwolooza & Brothers v. N. Shah & Co Ltd S.C. Civil Appeal No. 26 of 2010*). Court cannot by way of amendment sanction the altering or substitution of one distinct cause of action for another or change of the subject matter of the suit (see *Nambi v. Bunyoro General Merchants* [1974] HCB 12; *Biiso v. Tibamwenda* [1991] HCB 92; and *Hill & Grant Ltd v. Hodson* [1934] Ch. D 53). The application for amendment should be made in good faith. An application made *malafide* should not be granted and no amendment should be allowed where it is expressly or impliedly prohibited by law (see *Gasu Transport Services (Bus) Ltd v. Obene* [1990-94] EA 88).

The key considerations are that; (i) 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 by costs; (ii) the court will not refuse to allow an amendment simply because it introduces a new cause of action provided it would not change the suit into one of a substantially different character; (iii) amendments that enable the court do justice to the controversy between the parties and to effectually and completely adjudicate upon and settle all questions involved in the suit. The additional consideration is that Order 6 rules 9, 18 and 31 of *The Civil Procedure Rules* are intended to minimise proliferation of suits. An amendment will be allowed, if a multiplicity of proceedings will be thus minimised.

Having perused the applicant's pleadings and written submissions, I am satisfied that the applicant has presented a proper case for granting him leave to amend his plaint. The objective of this application is to ensure that the litigation between the parties is conducted, not on the false hypothesis of the facts already pleaded or the relief or remedy already claimed, but rather on the

basis of the true state of facts or the true remedy which the parties really and finally intend to rely on or to claim. Amendments are allowed by Courts so that the real question in controversy between the parties is determined and justice is administered without undue regard to technicalities in accordance with Article 126 (2) (e) of *The Constitution of the Republic of Uganda, 1995*.

5 Accordingly, the applicant is granted 14 (fourteen) days from today within which to file and serve his amended written statement of defence and counterclaim.

10 Considering the limited scope of the amendment and the fact that it is unlikely to require a corresponding amendment of the written statement of defence, the parties are directed to file their respective witness statements, trial bundles and a joint memorandum of scheduling before the next hearing date. Hearing of the suit is fixed for 25<sup>th</sup> August, 2021 at 11.00 am. The costs of the application to abide the results of the suit.

15 Dated at Kampala this 20<sup>th</sup> day of May, 2021

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Stephen Mubiru  
Judge,  
20<sup>th</sup> May, 2021.

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