



and were thus not pleaded. Also that the amendment sought is necessary to show the actual sums of money the Respondent defrauded the Applicant of. The Applicant avers that as a result of an audit, it discovered the Respondent defrauded it of Ugx. 169,478,282/= and not Ugx. 108,645,477.61/= as claimed in the main suit. That it is desirable and important that all matters in controversy be pleaded in court in order to reach a just and fair hearing. Lastly, that the amendment would in no way prejudice the Respondent since hearing has not yet commenced.

The Respondent opposed the application stating that the audit report the Applicant seeks to rely on is inadmissible at this stage since it has to be tested in evidence. As such the new figure cannot be introduced. That should leave be granted for amendment of the plaint, he will be prejudiced since he will have to defend new facts in an already incompetent suit.

#### Representation

At the hearing of this application, the Applicant was represented by Monica Namuli and Patricia Nambi, while Wasoga David, a legal assistant holding brief for counsel Isabirye Julius appeared for the Respondent. Parties filed written submissions as directed by the court.

#### Resolution

**Issue: Whether the Applicant should be granted leave to amend the plaint in Civil Suit No. 761 of 2020**

Order 6 Rule 19 of the Civil Procedure Rules provides:

19. Amendment of pleadings.

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 may be necessary for the purpose of determining the real questions in controversy between the parties. (Underlined for emphasis.)

Counsel for the Applicant relied on the decision of the Court of Appeal in **Eastern Bakery -v- Castelino [1958] 1 EA 461** which decision I agree with and shall rely upon. In that case, the court interpreted the application of Order 6 Rule 18 of the Civil Procedure Rules of Uganda at the time, which provision reads similar to Order 9 Rule 16 of the current Civil Procedure Rules above. In that case Sir Kenneth O'Connor P held:



“It will be sufficient, for purposes of the present case, to say that amendments to pleadings sought before the hearing should be freely allowed, if they can be made without injustice to the other side, and that there is no injustice if the other side can be compensated by costs: Tildesley v. Harper (1) (1878), 10 Ch. D. 393; Clarapede v. Commercial Union Association (2) (1883), 32 W.R. 262. The court will not refuse to allow an amendment simply because it introduces a new case: Budding v. Murdoch (3) (1875), 1 Ch. D. 42. But there is no power to enable one distinct cause of action to be substituted for another, nor to change, by means of amendment, the subject matter of the suit: Ma Shwe Mya v. Maung Po Hnaung (4) (1921), 48 I.A. 214; 48 Cal. 832. The court will refuse leave to amend where the amendment would change the action into one of a substantially different character: Raleigh v. Goschen (5), [1898] 1 Ch. 73, 81; or where the amendment would prejudice the rights of the opposite party existing at the date of the proposed amendment, e.g. by depriving him of a defence of limitation accrued since the issue of the writ: Weldon v. Neal (6) (1887), 19 Q.B.D. 394; Hilton v. Sutton Steam Laundry (7), [1946] K.B. 65. The main principle is that an amendment should not be allowed if it causes injustice to the other side. Chitaley p. 1313.”  
(Underlined for emphasis.)

I shall rely on the above principles in determining whether the amendment sought is warranted.

The Applicant states in the plaint that the Defendant/Respondent received sums of money worth Ugx. 108,645,477.61/= as stock and monies from the Plaintiff's (now Applicant) indebted clients. The basis of these sums is narrated in paragraphs 4(e)-(g) of the plaint thus. That the Plaintiff through its lawyers wrote a demand notice to one of its debtor, Prism Construction Co. Ltd, for Ugx. 65,363,251/=. They however learnt through a response from Prism Construction Co. Ltd's lawyers that the debt demanded had been paid to John Mboizi. That the Respondent also received money on the Plaintiff's behalf from Jonik Hardware, Gulf Ceramics, and Lumala Hardware, all of which were not remitted to the Plaintiff/Applicant. The amounts that the Plaintiff/Applicant claims to have received from Jonik Hardware, Gulf Ceramics, and Lumala Hardware were not particularly stated. Essentially, all the facts demonstrating that the Respondent withheld Ugx. 108,645,477.61/= of the Applicant's money were not pleaded.

The Applicant now in paragraph 4 of Francesca Helen Maniatis' (Managing Director of Applicant company) affidavit in support of the application states that at the time of filing the suit, she knew that the Respondent had received money from Jonik Hardware, Prisma Ltd, and Golf Ceramics, but did not state the exact



amounts received. Upon filing the suit, she initiated investigations and an audit on all the clients and their books of accounts which revealed the following. That the Respondent had received Ugx. 16,900,000/= from Delight Hardware, Ugx. 39,366,583/= from Prisma Ltd, Ugx. 5,466,230/= from Golf Ceramics, and Ugx. 26,574,990/= from Jonik Hardware. That in total, the Respondent defrauded Ugx. 169,478,282/= from the Applicant and not Ugx. 108,645,477.61/= as originally claimed; and seeks to introduce the audit report as part of the pleadings. See paragraphs 5 & 7 of the affidavit in support of the application.

Counsel for the Respondent opposed the application to alter the sum claimed arguing that it is based on an audit report saying that it has not been tested in evidence. According to counsel, court should first test its admissibility or relevance before the Applicant can found a claim on it.

I disagree with counsel for the Respondent. The Applicant does not seek to introduce the audit report into evidence. In fact, evidence has not yet been adduced in this case. At the time of this application, the parties had filed their pleadings, and the Plaintiff/Applicant had filed its scheduling memorandum that was not agreed to by the Defendant/Respondent. Therefore, the timing of the amendment is not prejudicial to the Respondent, because the main suit has not yet been heard, and evidence has not been given. What the Applicant seeks in this application is to firstly amend the amount claimed; and secondly to plead particular facts backing the sum claimed. These claims would then be the subject of witness testimony and other evidence during the hearing.

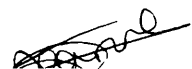
The amendment sought as spelt out above does not seek to introduce a new claim. It only seeks to alter the already existing claim for recovery of money by claiming Ugx. 169,478,282/= from the Respondent instead of Ugx. 108,645,477.61/= and provide facts leading to the cause of action. This is a permissible amendment which this court grants.

The amendment will not disadvantage the Respondent greatly to an extent that cannot be compensated by an award of costs, which shall be granted. The Respondent will have an opportunity to amend his Written Statement of Defence (WSD) after the amendment of the plaint and respond to the new averments.

In the premises, this application is granted. The issue is answered in the positive.

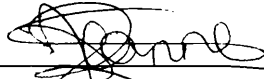
#### Conclusion

1. The Applicant is hereby granted leave to amend its plaint in Civil Suit No. 761 of 2020.
2. The Applicant is ordered to file its amended plaint in Civil Suit No. 761 of 2020 within seven (7) days from date of this ruling.



3. The Respondent is ordered to file its amended Written Statement of Defence in Civil Suit No. 761 of 2020, if any, within fifteen (15) days from date of filing of the amended plaint in the main suit.
4. Costs of this application are awarded to the Respondent.

I so order.



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**Jeanne Rwakakooko**  
**JUDGE**  
**31/05/2022**

Ruling delivered electronically on this 2nd day of June, 2022.