

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

[COMMERCIAL DIVISION]

MISCELLANEOUS APPLICATION NO. 1212 OF 2023

(ARISING FROM CIVIL SUIT NO. 421 OF 2020)

CHRISTINE BITANIHIRWE =====APPLICANT

VERSUS

G.N. MOHANA ROA=====RESPONDENT

Before Hon Lady Justice Patricia Kahigi Asiimwe

Ruling

Introduction

1. This Application was brought by Chamber Summons under Section 98 of the Civil Procedure Act and Order 1 Rule 3 and 13, Order 6 Rule 19 of the Civil Procedure Rules. The Applicant seeks orders for leave to amend her Complaint in Civil Suit No.421 of 2020 and costs of the Application be in the cause.

2. The grounds of the Application are contained in the Affidavit in Support sworn by Yese Mugenyi an advocate who stated as follows:
 - i) It was discovered that the 2nd Agreement dated 1st September 2013 was not included in the complaint filed in the Court.

A

ii) It is in the best interest that the Application is granted.

3. The Respondent opposed the Application through an Affidavit in Reply sworn by Respondent who stated that:

- i) The Respondent's advocate intends to raise a preliminary objection to the effect that the application is incompetent, malafide and misconceived as the Applicant by deception seeks to amend the cause of action to defeat his defence.
- ii) The instant application offends principles governing applications to amend pleadings and the Oaths Act.
- iii) The Affidavit in Support of the Application contains falsehoods.
- iv) Annexure A to the Affidavit in Support of the Application is one of the documents listed and contained in his trial bundle, Joint Scheduling Memorandum and the Written Statement of Defence, which were accessed by the Applicant through service prior to this Application.
- v) The main suit was premised on breach of tenancy agreement dated 1st September 2010 and in his Written Statement of Defence, he challenged the suit on grounds that it was barred by limitation and did not disclose a cause of action against him.
- vi) This Application is intended to defeat those preliminary objections.

- vii) It is not true that the Applicant discovered the 2nd lease agreement dated 1st October 2013 as alleged, she had access to the said lease.
 - viii) The Applicant did not demonstrate how the intended amendment would help court determine the matters in issue.
 - ix) The intended amendment clearly shows that the Applicant has introduced new averments in the Plaint and changed the cause of action.
4. The Applicant filed an affidavit in rejoinder sworn by Yese Mugenyi who stated as follows:
- i. The Affidavit sworn by the Applicant was dated and all facts therein are true.
 - ii. Since the Respondent had prior knowledge of the 2nd agreement, this will help the Court understand the gist of this matter.
 - iii. The 2nd lease agreement is intended to avoid multiplicity of suit and will neither change nor introduce a new cause of action.

Representation

5. The Applicant was represented by M/S Mugenyi & Co. Advocates and the Respondent was represented by M/S MRK Advocates. Both parties filed their Written Submissions.

Issue

6. Whether the Applicant should be granted leave to amend the
Plaint

Submissions

Applicant's Submissions

7. Counsel for the Applicant cited the cases of *Gasco Transport Services (Bus) Ltd V Obene 1990-1994 EA 88* and *Sarope Petroleum Ltd Versus Orient Bank Ltd & 2 Others Misc. Application No.72 of 2011* on the principles governing the amendment of pleadings.
8. Counsel submitted that the Application should be granted because it is intended to avoid multiplicity of suits, it will not prejudice the Respondent, and it will enable court to effectually and completely adjudicate upon and all questions involved in the suit. Counsel further submitted that the amendment will not will not change the cause of action which is breach of contract. The amendment is intended to add another agreement dated 1st October 2013.

Respondent's Submissions

9. Counsel submitted that criteria to amend a plaint is set out in Order 6 Rule 19 of the Civil Procedure Rules was also extensively discussed in the case of *Jennipher Nsubuga V Moses Kaliisa & Ano HCMA N. 253 of 2013* cited with approval in the

case of *Gasco Transport Services (Bus) Ltd V Obene (1990-1994) EA 88* where it was held that “No amendment should be allowed where it is expressly prohibited by law... the intended amendment after observing the Written Statement of Defence and then seeking to fill the gaps in the Plaintiff’s case is not only mala fide, but is also aimed at prejudicing the defendant’s case, and further a plaint that is time barred cannot be amended... and a plaint that is time barred cannot be amended.”

10. Counsel submitted that the Applicant’s pleaded cause of action as breach of contract of the lease agreement dated 1st September 2010 which expired on 30th September 2019. The Respondent pleaded limitation in his Written Statement of Defence which was accessed and perused by the Applicant. The amendment is calculated to defeat the Respondent’s defence of limitation and after realizing the main suit does not disclose a cause of action against the Respondent.

Submissions in Rejoinder

11. Counsel submitted that the amendment will not prejudice the Respondent the Applicant’s intention is to add the second lease agreement which the Respondent has knowledge about. The defence of limitation cannot stand since the Applicant prayed for payment of USD 4,800 rent in lieu of notice which offence arose from the breach of the 2nd lease agreement dated 1st September 2013. The breach of contract arose in 2016, the suit

was filed in 2020 and therefore the issue of limitation does not arise.

Resolution

12. Under *Order 6 Rule 19 of the Civil Procedure Rules* it is provided as follows:

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.

13. The principles for granting leave to amend proceedings as stated in the cases of **Gasu Transport Services (Bus) Ltd V. Obene SCCA No.4 of 1994 [1990-1994] 1 EA 88**, **Eastern Bakery V Castelino 1958 1 EA 461** and **Mulwooza & Brothers Ltd Vs Shah & Co. Ltd, SCCA No. 26 of 2010** are as follows:

- a) There is no injustice caused to the other party and if there is, it can be compensated by costs.
- b) 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.

- c) The amendment would not prejudice the rights of the opposite party.
- d) The application should not be malafide.
- e) Multiplicity of proceedings should be avoided.
- f) A court will not allow an amendment that enables the substitution of one distinct cause of action for another or changes the subject matter of the suit into one of a substantially different character.

14. Counsel for the Respondent submitted that the Applicant's suit was filed in 2020, and it was for breach of an agreement dated 1st September 2010 which expired on 30th September 2013. The said cause of action was supposed to be filed within 6 years which expired on 30th September 2019.
15. Under section 3 (1) of the Limitation Act Cap 80, actions founded on contract shall not be brought after the expiration of six years from the date on which the cause of action arose.
16. Under paragraph 4 (a) of the Plea the agreement referred to is the one dated 1st September 2010. In his written statement of defence the Defendant pleaded limitation as a defence.
17. In the case of **Eastern Bakery V Castelino** (supra) court further held that amendment will not be allowed where it would prejudice the rights of the parties existing at the date of the

proposed amendments e.g deriving a party to the defence of limitation accrued since issue of the writ.

18. In the case of **Fredrick M Waweru & Another V Peter Ngure Kimingi Nairobi High Court Civil Appeal No. 171 of 2003** it was held that:

It would not be just to allow amendments the effect of which would be to deprive the defendant of his defence under the Statute of Limitations... The Court has never treated it just to deprive the defendant of a legal defence.

19. I find that allowing this amendment will deprive the Respondent of his defence under the Limitation Act. The amendment will cause an injustice to the Respondent. The Application is therefore dismissed. The costs shall follow the main cause.

Dated this 20th day of October 2023



.....
Patricia Kahigi Asiimwe

Judge

Delivered on ECCMIS