

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.

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.