

**MISCELLANEOUS APPLICATION NO. 1179 OF 2021
ARISING FROM CIVIL SUIT NO. 416 OF 2020**

VERSUS

(Before: Hon. Lady Justice Patricia Mutesi)

Background

The Application

The Respondent opposed the application through an affidavit in reply sworn by its managing director, Chirag Goswami, who averred that the proposed amendment would be contrary to the rules governing amendment of pleadings. He also stated that the amendment will prejudice the Respondent by requiring it to alter the nature of its defence.

Representation and hearing

The Applicant was represented by M/S Mbeeta, Kanya & Co. Advocates while the Respondent was represented by M/S Barenzi & Co. Advocates. None of the parties and their counsel appeared in Court when the application was called on for hearing. Nonetheless, I will proceed to determine this application on the basis of the pleadings and other relevant materials on record.

Issue arising

1. Whether the applicant should be granted leave to amend his plaint.

Decision

Courts have the discretion to allow a party to a case to alter 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 (See **Order 6 rule 19** of the Civil Procedure Rules). In **Mulwooza Brothers Ltd v N. Shah & Co. Ltd, SCCA No. 26 of 2010**, the Supreme Court affirmed that amendments to pleadings sought before the hearing should be freely allowed, if they can be made without an injustice to the other side.

Therefore, amendments may be 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**. If a plaintiff applies for leave to amend his or her pleadings, a court should, in the interest of promoting justice, freely allow him to do so unless this would cause an injustice to the opposite party which cannot be compensated for by an award of costs, or unless the amendment would introduce a distinct cause of action in place of the original cause.


In this case, the main suit is yet to be scheduled and heard. The Applicant has sought leave of Court to amend his plaint so that he can plead the actual outstanding loan balance of UGX 194,400,000. In the plaint, he stated that on 7th February 2018, he advanced a loan of UGX 220,000,000 to the Respondent which was repayable on or before 30th June 2018. He also stated that the Respondent issued to him postdated cheques which were all eventually dishonoured. In this

application, he has confirmed that since the filing of the main suit, the respondent has made part payment of the debt to the tune of UGX 25,600,000 and that this has reduced the outstanding loan balance to UGX 194,400,000.

I do not see any prejudice that could arise from the proposed amendment. Contrary to the Respondent's assertions, its defence is not likely to change in any significant way. The Applicant is simply asking for permission to correct the amount he pleaded as the loan balance in the plaint. Similarly, the Respondent can only be expected to amend its defence thereafter to respond to the updated claim. This amendment of the plaint will reduce the sum claimed. In this sense, the amendment also coincidentally favours the Respondent's interests because it will reduce the Respondent's potential liability in the main suit.

In the premises, I find that the proposed amendment will enable the court to deal with the actual amount of loan arrears in dispute between the parties. Consequently, I make the following orders:

- i. The Applicant is granted leave to amend his plaint in order to update the amount claimed as the outstanding loan balance.
- ii. The Applicant shall file the amended plaint in Court and serve the same on the Respondent within 14 (fourteen) days from the date of this ruling.
- iii. Costs of this application shall abide by the outcome of the main suit.



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Patricia Mutesi

(JUDGE)

(20/10/23)