THE REPULIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

CIVIL SUIT NO.504 OF 1993

UGANDA PETROLEUM CO. LTD::PLAINTIFF

VERSUS

HAJI KAYONGO::DEFENDANT

BEFORE: THE HONOURABLE MR. JUSTICE I. MUKANZA

RULING

The plaintiff company filed this suit against the defendant under summary procedure Order 33 Rule 2 of the Civil Procedure Rules. The plaintiff's claim against the defendant is for payment and or recovery of Ug.Shs.6,893,225/= being the total sum of petroleum products procured by the defendant from the plaintiff in the period between 1992 and March 1993.

The defendant was granted leave to appear ad defend and he thereby filed in his written statement of defence within the period stipulated in the ruling.

At the trial he plaintiff company called its first witness Martin Owinyi and then called PW2 in the names of Ndikola Senoga Wilson and finally one Brian Othieno PW3 the legal secretary of the plaintiffs Uganda Petroleum Company. After that the plaintiffs closed its case the learned counsel representing the plaintiffs company made an oral application to amend the pleadings to include the prayer for damages. The application apparently was somehow opposed by the application hence this ruling to resolve the matter.

Mr. Bwanika submitted that the back ground of this case was that the case was filed under summary procedure recover a debt summarily. They realized the defendant got leave to defend the suit but at the end of the plaintiff's evidence it appears that the defendant should be awarded some damages. I was referred to the case of D. Dodo limited Vs. G.S. Dindar Singh 1961 EA

page 282 where the learned Judge after dealing with order 6 r 18 and 30 of the Civil Procedure Rule held that pleadings could be amended orally at The hearing as per order 6 r 30 of the civil procedure rules.

Mr. Bwanika continued that given the background of this case the defendant will not be prejudiced because he has not given his defence.

Mr. Mubiru on the other hand submitted that the application could be entertained by the court although it has been made orally but contended that it does not assist the court to adjudicate on the issues before the court. It sought to amend the prayers where the ground upon which damages arose are not prepared. A mere amending of the prayers without the damages being raised in the pleadings if he plaintiff is allowed to amend he must specifically mention the ground upon which the damages could be awarded. He also prayed for costs of such an amendment to be paid to the defendant inany event.

In reply Mr. Bwanika submitted that his learned friend did not take into account his prayer. He was applying for amendment after going through the evidence of the three witnesses. The company suffered more than the money owing to the company most especially the last witness. Time spent in discussions and the financial embarrassment. His learned friend has been cross examining PW3 on legal matters on such matters as inconveniencing the plaintiff company. He could not see any prejudice if the amendment was granted. The purpose of the pleading is to give notice to the adverse party and the plaintiff has given reason in his evidence for claiming general damages. If his learned friend wanted to put matters which had featured in evidence to be put in the pleadings he was not going to call evidence. He prayed that costs abide by the outcome of the main suit.

I have very carefully considered the submissions by the learned counsels order 6 r 18 of the Civil Procedures allows their party to amend the pleadings at any stage of the proceedings in such manner and on such terms as may be just and all such amendments shall be as may be necessary for the purpose of determining the real questions in controversy between the parties. And those amendments to pleading should be by chamber summons rule 30 of order 6 of the Civil Procedure Rules. See also **Evarist Mugabi vs. Attorney General 1991 HCB page 65.** There are

however some authorities where it has been held that amendment to pleadings could be made orally during the course of the Trial **Sir Audley in D.D. Baw, Limited vs. G.S. Dider Singh Supra** had this to say at **page 284**:—

Order 48 of the Civil Procedure Rules deals

> "With motions and other applications the court, save where otherwise expressly provided for under these rules shall be by motion and shall be heard in open court, Rule 30 of order 6 is clearly one of the exceptions to this general provision. I think its purpose is not to preclude the court from declining with an oral application to amend pleadings in the course of hearing but to provide that if an interlocutory application under order 6 r 18 it shall be by the procedure of summons in chambers and not by notice of motion, otherwise the words at any stage of the proceedings in r 18 would hardly be consistent with r 30."

In **Kedi vs. Attorney General 1991 (HCB) page 100** the oral application to amend in terms of Order 6 Rule 18 was ill order since no injustice would arise in amending the plaint.

Besides the referred to cases there are host of authorities on the question of amendment; of he pleadings. In Lolgigh vs. Goscham 1891 ch 73,81. There it was held that the court will refuse leave to amend where the amendment substantially would charge the action into one of substantially different character or where the amendment would prejudice the rights of 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 right **Weldon vs. Neal 1887 19 QBD at page 394.** The main principle is that amendment should not be allowed if it causes injustice to the other party.

In the instant case from the authorities referred to above it is the considered opinion of this court that the application to amend orally would be permissible in the circumstances of this case if it caused no injustice to the defendant. As already stated above, the plaintiff sued for a liquidated sum under summary procedure. In the pleadings he did not lay ground for the claim for damages. In fact if the amendment is granted substantially would change the action into one of substantially different character. I am agreeable with the submissions of Mr. Mubiru that the amendment would not assist the court to adjudicate upon the issue before the courts. I am of the

view that even if the defendant was to be awarded costs that would not still assist since the amendment could change the character of the litigation. After all, a party should not plead a new matter which is not reflected in his pleadings.

All in all the application to amend the pleadings by inserting in the prayer (damages) is rejected with costs to the defendant.

I MUKANZA

JUDGE

1/6/94.