THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT MBARARA

HCT-05-CV-CA-011-2005

(From MDLT-69-2004)

GEORGE PATRICK MWEBAZE & OTHERS …….APPELLANTS

VS

SAIDI KWININI ……RESPONDENT

BEFORE: THE HON. MR. JUSTICE P. K. MUGAMBA

JUDGMENT

This is an appeal against the decision of the Mbarara District Land Tribunal to allow the Respondent herein amend his statement of claim. Leave to amend was granted by the Tribunal on 7 December 2004 after counsel for the Respondent herein had made an oral application.

The memorandum of appeal contains the following grounds:

1. The tribunal erred in law to entertain an application that had no proposed amendment.
2. The tribunal erred in law to allow an amendment in general terms.
3. The tribunal erred in law to allow an amendment that introduced a new cause of action.

Under Order 6 rule 18 of the Civil Procedure Rules amendment of pleadings is provided for as follows:

> 'The Court may, at any stage of the proceedings, allow either party to alter or amend his pleading in such 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'.

Indeed the Court of Appeal for Eastern Africa in *Abdul Karim Khan vs Mohamed Roshan* [1965] EA 289 held that an appellate court will not interfere with the exercise of the trial Judge's discretion to allow or refuse amendments unless satisfied that he has applied a 7 wrong principle

or that manifest injustice would result. In that case court upheld refusal of leave to amend on the footing that the proposed amendment would introduce inconsistent pleadings.

Counsel for the appellants argued grounds 1 and 2 together saying the tribunal should not have allowed the respondent to amend pleadings without making manifest the proposed amendment. What was given was a blank cheque, so to speak, allowing for any manner of amendment. In *Hall vs Meyrick* [1957] 2 All ER 722 relied upon by the appellants Parker L. J. Lord of Appeal, had this to say at page 729 of the report:

'In regard to the amendment, I will only say this: It often happens in the course of a tribunal that an application is made by a party for leave to amend, and the trial judge may well then and there express the view that he will allow an amendment or will consider an amendment; but, unless and until the amendment has been put in writing and submitted to the other side, and the other side have had an opportunity of making submissions on it, anything that the trial judge has said must be in the nature of a provisional view, and not a final ruling.

The above dictum persuades me regarding procedure in such circumstances. Nothing was proposed by way of amendment on 17th December 2004 other than intent. Yet the Tribunal readily granted leave to amend. I find such procedure irregular.

It is early days yet and the Tribunal is still seized with determination of the merits of the case. However I would hold that leave to amend was wrongly granted and should in the circumstances be annulled. The Respondent should formally seek leave to amend his pleadings before the Tribunal if he is still so inclined. Consequently I desist from discussing the third ground of appeal.

This appeal succeeds with costs.

P. K. Mugamba

Judge

31st May 2005

31st May 2005

Mr. Kwizera for respondent

Mr. Dhabangi holding brief for Mr. Mwema-Kahima for the appellants

Both parties in court

Ms Tushemereirwe court clerk

Court:

Judgement read in court.

P. K. Mugamba

Judge