

THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT KAMPALA  
MISCELLANEOUS APPLICATION NUMBER 576 OF 2006  
THE TRUSTEES OF RUBAGA MIRACLE CENTRE ::: APPLICANT  
**VERSUS**  
MULANGIRA SSIMBWA ::::::::::::::::::::::::::::::::::: RESPONDENT

**AND**  
MISCELLANEOUS APPLICATION NUMBER 655 OF 2005  
Mulangira Ssimbwa a.k.a Afidra Milton ::::::::::::::::::: APPLICANT

**VERSUS**  
1. THE BOARD OF TRUSTEES,  
MIRACLE CENTRE }

2. PASTOR ROBERT KAYANJA }::::::::::::::::: RESPONDENTS  
(both Applications arising from HCCS No. 768 of 2004)

**BEFORE: AG. JUDGE REMMY K. KASULE**

## **RULING**

This Ruling is in respect of two applications, namely **Miscellaneous Application Number 576 of 2005** and **Miscellaneous Application Number 655 of 2005**.

**Application Number 516 of 2005** is brought under Order 7 Rules 11 and 19 of Civil Procedure Rules and seeks the rejection of the Plaintiff in **HCCS No. 768 of 2004** on the ground that the Defendant in the suit, described as THE BOARD OF TRUSTEES, RUBAGA MIRACLE CENTRE CATHEDRAL, is a non existing person, with no capacity to sue or be sued.

In Application Number 655 of 2005, the applicant, Mulangira Ssimbwa a.k.a Afidra Milton, seeks leave to amend the Plaint in HCCS No. 768 of 2004, by adding Pastor Robert Kayanja as a party to the suit, in addition to the Board of Trustees, Miracle Centre Cathedral.

H.C.C.S No. 768 of 2004 was instituted by **Mulangira Ssimbwa a.k.a Afidra Milton** as Plaintiff, against **The Board of Trustees, Rubaga Miracle Centre Cathedral**, as Defendant; claiming Ug. Shs.12,200,000/= (Twelve million two hundred thousand) general damages and interest thereon being monies due and owing to the Plaintiff from the Defendant.

The claim is stated to be pursuant to an oral construction agreement executed in 1999 whereby Plaintiff was contracted to complete the construction of Rubaga Miracle Centre Cathedral.

Learned Counsel, Arthur Ssempebwa, for applicant, submitted in respect of **Miscellaneous Application Number 576 of 2005** that the Plaint in H.C.C.S No. 768 of 2004 has to be rejected under Order 7 Rules 11 and 19 of the Civil Procedure Rules as the defendant does not exist as a real or legal person capable of suing or being sued. This had been expressly pleaded in paragraph 2 of the Written Statement of Defence:-

**“2. The Defendant files this defence in protest, as it is not aware of the identity or existence of the Defendant but was none the less served with Court Process.”**

With such averment as part of the Written Statement of defence, the burden of proof shifted to the Plaintiff to establish the proper capacity of the Defendant to sue and to be sued. Section 101 (2) of the Evidence Act also puts the burden of proof of a fact on the one, who asserts that fact. Thus Plaintiff has to establish the fact of the correct identity of the Plaintiff. This burden has not been discharged by the Plaintiff in the suit.

He further submitted that since the suit is brought against a non existing Defendant, the Plaint has to be rejected. The same cannot be amended.

Learned Counsel Sebastian Angeret, representing the opposite side, insisted that the Plaintiff should be amended under Order 1 Rule 10(2) of the Civil Procedure Rules by adding on Pastor Robert Kayanja as the second Defendant. This was to enable Court to determine and adjudicate effectually on all the issues before Court. Pastor Robert Kayanja had negotiated the construction contract with the Plaintiff and therefore it was only fitting that he is added as second Defendant.

The law is now settled. A suit in the names of a wrong Plaintiff or Defendant cannot be cured by amendment: **THE FORT HALL BAKERY SUPPLY CO. VS. FREDERICK MUIGAI WANGOE : [1959] EA 474.**

and

**BENJAMIN SAJJABI T/A NAMATABA VS. TIMBER MANUFACTURERS LIMITED [1978] HCB 202.**

While Order 1 Rule 10 (2) empowers Court to add or strike out a party improperly joined; and Order 1 Rule 10 (4) allows an amendment of a Plaintiff where the Defendant is added or substituted, such amendments of the Plaintiff can only be made if they are minor matters of form, not affecting the substance of the identity of the parties to the suit: See **Reliable African Insurance Agencies Vs National Insurance Corporation [1979] HCB 59.**

Where the amendment by way of substitution of a party purports to replace a party that has no legal existence, the Plaintiff must be rejected as it is no Plaintiff at all: See **High Court Miscellaneous Application Number 503 of 2000. Aristoc Booklex Limited Vs. Vienna Academy Limited**, unreported.

In the instant application, the Defendant described as **The Board of Trustees Miracle Centre Cathedral**, does not exist in law. The attempt to add Pastor Robert Kayanja, is really an attempt to substitute a non existing Defendant. The law does not allow that as in reality there is no valid plaintiff in the suit.

Accordingly **Miscellaneous Application Number 576 of 2005**, is allowed. The Plaintiff is rejected in **H.C.C.S No. 768 of 2004**. **Miscellaneous Application No. 655 of 2005** stands dismissed.

Since the decision of the Court is that there is no defendant to the suit, no order will be made as to costs. A non existing party cannot be paid costs. See: **The Fort Hall Bakery and the Benjamin Ssajjabi cases (supra)**.

**Remmy K. Kasule**

**Ag. Judge**

**5<sup>th</sup> May 2006**