THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT GULU

HCT – 02 – CV – MA – 013 – 2009

(Arising from Civil Suit No. 038 of 2006)

ATTORNEY GENERAL ::::::::::::::DEFENDANT/APPLICANT

VERSUS

ADYERA NOBERT & ORS::::::: PLAINTIFFS/RESPONDENTS

BEFORE: HON. JUSTICE REMMY K. KASULE

RULING

The applicant has applied to amend the written statement of defence filed in Civil Suit No. 38 of 2006.

The application is being brought under section 100 of the Civil Procedure Act, and Order 6 Rule 19 of the Civil Procedure Rules.

The essence of the amendments as set out in the proposed amended written statement of defence, annexure "A" to the affidavit of Henry Oluka, senior State Attorney, filed in support of the application, is that the respondents, as plaintiffs in the suit, have no cause of action against the defendant in definue; that the plaintiff's suit is incompetent. In the alternative it is contended that in respect of the claim for livestock the defendant is not liable, as whoever soldiers of Government committed the tortious actions in respect of livestock, did so while not acting in the course of their employment. The proposed amended written statement of defence is dated 10th December, 2008.

The law as to amendments as set out clearly in section 100 of the Civil Procedure Act, and Order 6 Rule 19 of the Civil Procedure Rules, is that an amendment may be allowed by court, at any stage of proceedings, in such a manner and on such terms as may be just. Amendments are to be

made if they are necessary for purpose of determining the real questions in controversy between the parties to the suit.

However negligent or careless may have been the first omission; and however late the proposed amendment, an amendment should be allowed if it can be made without injustice to the other side. The other side can always be compensated with costs.

However, court will not allow an amendment, whose result will cause injury to the opposite side; or will lead to injustice which cannot be cured. Court is also inclined to refuse an amendment that is made malafide, or one likely to cause undue delay, or will in any other way unfairly prejudice the other party, or is irrelevant or useless.

The application to amend the written statement of defence was first made informally to court on 24th November, 2008. Court declined to entertain the application, but advised the applicant to first consult the respondents' counsel about the same: with a view to finding out whether the same could be done by consent. Court, of course, at that time, did not know the nature of the proposed amendment.

Thereafter counsel for applicant consulted respondents' counsel about the proposed amendment. Respondents counsel refused to consent to the amendment. Hence this application.

The affidavit of Henry Oluka, senior State Attorney, dated 19th February, 2009, filed in support of the application to amend has two reasons for the amendment, contained in paragraphs 6 and 7 thereof, namely that the amended written statement of defence does not backtrack the settlement as directed by H.E. The president of Uganda, and that it is just and equitable in the circumstances that the leave to file an amended statement of defence be granted.

The respondents' counsel have opposed the application on the ground that, a consent judgment having been entered in the suit on 11th September, 2008, to allow such an amendment would amount to acting contrary to the terms of the settlement.

It is part of the court record to the proceedings in Civil Suit No. 38 of 2006 that on 11th September, 2008, the then counsel for the applicant, having been served with an amended plaint of the respondents, sated to court that he was not filing any amended written statement of defence. Court thereafter noted that both parties to the suit had closed their pleadings in the suit.

Thereafter both counsel for the applicant (defendant in the suit) and for respondents (plaintiffs in the suit) prayed court to record a settlement in the suit in the terms that they set out to court. Court recorded the settlement in the presence, with the agreement and at the dictation of counsel for all the parties to the suit.

The main essence of the settlement was that the Government, represented by applicant/defendant, agreed to settle the case and pay the respondents/plaintiffs and those they represent for those claims as stated in the pleadings of the suit. The settlement then detailed, amongst other terms of settlement, how verification of the individual claims of the respondents was to be done.

It is a term of the settlement, that any of the parties can seek directions/decision of the court by applying to court as regards any matter as to the execution of the settlement.

The applicant has not in any way challenged in this court, or elsewhere, the validity of the consent judgment of 11th September, 2008. The applicant is bound by the terms of the said consent judgment.

There is therefore merit in the submission of the respondents' counsel that the applicant cannot, at this stage, amend the pleadings in the suit, the subject of the consent judgment, in such a manner and terms that are contrary to the terms of the consent judgment.

In the considered view of court, to allow an amendment as is contained in the proposed amended written statement of defence, whereby the applicant denies liability, contends the respondents have no cause of action against him and that applicant's servants were on a floric of their own when they carried out some of the tortious actions, would be to act contrary to the terms of the

consent judgment of 11th September, 2008. This will cause injustice to the respondents, who are now looking forward to execution of the terms of the settlement. They will also be unfairly prejudiced.

Court therefore finds no merit in the application. The same stands dismissed with costs to the respondents.

Remmy K. Kasule
Judge
6th April, 2009