

Minister of Finance, 29 years ago for being a nullity at law. The Applicant filed Miscellaneous Application No. 046 of 2023 seeking to amend the pleadings and add Attorney General as the 2nd Respondent in Miscellaneous Cause No. 02 of 2023.

In reply to the Application, the Respondent filed an affidavit in reply deposed by George William Bizibu the Executive Secretary of the Respondent, wherein he objected to the application on ground that the Application is improperly before Court as it is brought by way of Chamber Summons instead of a Notice of Motion, and that the Application is defective as it seeks leave to amend the Application instead of an application to add the Attorney General.

Representation

During the hearing of this Application, the Respondent was represented by Counsel Wandera Ogalo while the Applicant was self-represented.

Counsel Wandera Ogalo raised an objection that the Application was not properly before Court as it was brought by Chamber summons under O. 1 r 3 of the Civil Procedure Rules (CPR) seeking to add the Attorney General yet addition of parties is brought under O. 1 r 10(2) by way of Notice of Motion.

The Parties were allowed to make oral submissions which have been considered by this Court in this Ruling.

Submissions

In his submissions, Counsel for the Respondent reechoed his Preliminary Objection to which he added that addition of parties is brought under **O. 1 r 10(2) of the CPR** which is supposed to be by way of Notice of Motion. It was Counsel's argument that **O. 1 r 3 of the CPR** does not address the amendment of pleadings therefore the Application is improperly before Court and it should be struck off the record.

In reply, the Applicant submitted that the Application was brought under **Sections 98 and 100 of the CPR, Section. 33 of the Judicature Act, O. 1 r 3 & 13 of the CPR, O 6 r 19 & 31 of the CPR, R. 7 of the Judicature (Judicial Review) Rules and Art. 126 (2) (e) of the 1995 Constitution**. That the preliminary objection raised by Counsel for the Respondent can be disregarded by Court under **Article 126 (2) (e) of the Constitution** since it is more of a technicality to defeat justice.

The Applicant referred to the case of **Banco Arab Espanola Vs Bank of Uganda (1999) 2 EA 22**, where the Supreme Court held that *the administration of justice should normally require that the substance of all disputes should be investigated and decided on their merits and that errors/lapses should not necessarily bar a litigant*



20.10.23

from the pursuit of his rights unless the lack of adherence to rules renders the application process difficult and inoperative.

He further referred to the case of **National Enterprises Corporation Vs Mukisa Foods Ltd C.A No. 42 of 1997** where the Court of Appeal held that denying a subject a hearing should be the last resort of Court. He prayed that the Application be heard on merit.

In rejoinder, Counsel for the Respondent submitted that **Article 126 (2) (e)** of the Constitution did not do away with rules of the Court. They are hand maidens of justice which enable the court to dispense justice. It is not a mere technicality. He further submitted that it is shown clearly by the fact that had the Applicant applied the proper rule, the Attorney General he wishes to add would be before Court.

Counsel further urged that **Banco Arab Espanola** case cited by the Applicant emphasizes this point "the lack of adherence to the rules renders the process difficult and inoperative." Counsel concluded that they are not denying the Applicant the right to be heard. That if the Applicant uses the right procedure, he can be heard. Counsel prayed that the Application be dismissed with costs.

Issues

1. Whether this Application is properly before Court.
2. Whether the applicant can add the Attorney General as the 2nd Respondent.
3. Remedies

Court's Consideration

1. Whether this Application is properly before Court.

Before proceeding into the merits of the application. I wish to first handle the preliminary objection raised by the Respondents' Counsel that the application is incompetent since it was brought by Chamber Summons instead of by way of Notice of Motion.

Generally, Order 1 of the CPR provides for parties to suits and stipulates who can be joined, added, substituted and struck off as parties to any suit.

The issue of determining as to whether the Attorney General can be added as a party to the suit as the 2nd Respondent is governed under **O.1 rule 10(2) of CPR** which provides that: -

The court may at any stage of the proceedings either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck



20.10.23

out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit, be added. (Emphasis added).

The law that explicitly provides for the procedure to add a party is provided for under **O.1 rule 13 of CPR** which provides that: -

*"Any application to add or strike out or substitute a plaintiff or defendant may be made to the court at any time before trial by **motion or summons** or at the trial of the suit in a summary manner". (Emphasis mine).*

In the case of **Kinyara Sugar Limited v Kyomuhendo (Miscellaneous Application No. 61 of 2020) [2021] UGHCCD 179 (4 October 2021) Hon. Justice Byaruhanga Jesse Rugyema** stated that:-

"In terms of definition of summons, Dictionary from Oxford languages, it is; "An order to appear before a judge or Magistrate of the writ containing such an order."

"In the Merrian Webster Dictionary, it is:

"A written notification to be served as a warning to appear in court at a day specified to answer to the plaintiff."

"A summons therefore, is an official notice of a law suit. It is the summons that invokes the power of the court to require an appearance by the defendant/Respondent. The defendant is "summoned" to appear or face default. The summons is the "voice of the court."

In the instant case, the Chamber Summons initiating proceedings that was served upon the Respondent requiring him to appear and contest the application or face default, is a summons within the meaning of 0.5 r.1 (b) CPR."

I am persuaded by the above authority and find that the Chamber Summons as used in this Application fall within the meaning of summons under O. 1 r 13 of the CPR wherefore, I find no offence with the procedure used.

I also critically looked at the application and among the laws cited under which the application is brought is O.1rule 3 and 13 of the CPR. He rightly cited the law on


20.10.23

procedure which is O1 r 13, however, he omitted 0.1r.10(2) of the CPR which provides for the addition of parties.

On citing O. 1 r 3 of the CPR instead of O. 1 r 10(2) which is the correct law for addition of parties, there is a plethora of authorities to the effect that citing a wrong law or even failure to cite any law under which a case is brought is not fatal for as long as the substance of the case is clear on the pleadings and the opposite party is not prejudiced. (See **Gold beverages (U) Limited Vs Muhangura Kenneth & Anor Misc. Appln. No. 674 of 2019**).

Therefore, the procedure adopted by the Applicant is not in violation of the rules of procedure and is not fatal to the proceedings. From the foregoing, the objection as raised by Counsel for the Respondent is overruled.

2. Whether the applicant can add the Attorney General as 2nd Respondent.

The power to add or strike out a party to pleadings lies within the discretion of Court which must be exercised judiciously based on sound principles. See **Yahya Kariisa Vs AG & Anor SCCA No.7 of 1997[1997] HCB 29**. The main purpose of joining parties is to enable the Court to deal with matters brought before it and avoid multiplicity of suits.

A party may be added or joined in a suit not because there is a cause of action against it but because that party's presence is necessary in order to enable Court effectually and completely adjudicate upon and settle all the questions involved in the cause or matter. (See **Departed Asians Property Custodian Board V Jaffer Brothers Ltd (1999) E. A 55**).

Also in the case of **Vastine Kyalisima Vs Josephine Abaasa HC (Land Division) Kampala, Misc. App. No. 500.of 2021**, Hon Justice Alexandra Nkonge Rugadya stated that: -

"It is a fundamental consideration that before a person can be joined as a party, it must be established that the party has high interest in the case. In addition, it must be clearly demonstrated that the orders sought in the main suit would directly or legally affect the party seeking to be added." (emphasis added)

In the instant application, the applicant seeks to have the Attorney General added as a party to the suit to allow for better interrogation of the controversy in the matter. In his affidavit in support, the applicant avers under Paragraph 3 thereof that MC.No.2 of 2023 is seeking for declarations and orders to review the actions of the Respondent and the decision of the Minister of Finance Planning and Economic Development of the Republic of Uganda who is constitutionally supposed to be represented by the Attorney General under Art.119 of Constitution.

BFL

20.10.23

This Court has observed that under Section 4(3) of the Assets of Departed Asians Act Cap 83, the Respondent may sue and be sued in its corporate name. It is therefore this Court's opinion that the decision of the Respondent's Secretary dated 19th October, 2020 can be ably challenged having sued the Respondent in her corporate name.

In respect of the decision of the Minister of Finance, Planning and Economic Development that the applicant seeks to challenge, it is provided for under Section 4(1) of the Assets of Departed Asians Act Cap 83 that the Minister of Finance is a member and Chairperson of the Departed Asians' Property Custodian Board. The decision of the Minister sought to be challenged is derived from the decision made by the Respondent who can be sued in her corporate name as earlier found by this Court. I, therefore find no reason to add the Attorney General in this matter.

It is my opinion that in an application to add a party, the applicant must prove that the party's presence is necessary. I have carefully perused the record and found no evidence adduced by the Applicant showing how the Attorney General's presence in this matter is necessary.

For the foregoing reasons, the said application fails.

I thus reject this application with costs to the Respondent.

I so order.


.....
JUSTICE FARIDAH SHAMILAH BUKIRWA NTAMBI
Ruling delivered on 20th October, 2023.