

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT MASINDI
MISCELLANEOUS APPLICATION NO. 0001 OF 2023
ARISING CIVIL SUIT NO. 0051 OF 2022

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GUZIME AMON APPLICANT/PLAINTIFF

VERSUS

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1. BYARUHANGA JOHN

2. GATYO RICHARD RESPONDENTS/DEFENDANTS

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BEFORE: Hon. Justice Isah Serunkuma.

RULING

The applicant brought this application under Section 98 of the Civil Procedure Act, Section
20 33 of the Judicature Act and Orders 6 rule 19 of the Civil Procedure Rules seeking for court
orders that;

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1. The applicant be allowed to amend his plaint in order to assist this honorable court to effectively determine the real questions in controversy between the parties being the estate of the late Yolamu Wandera during the pendency of the suit in this court.
2. Costs of this application be provided for.

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The applicant further laid out the grounds upon which this application is based including;

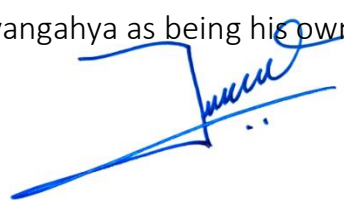
1. That the applicant filed Civil Suit No. 0051 of 2022 jointly and severally against the respondents/defendants for trespass to his land located at Nyangahya Division, Masindi district, general damages, mesne profits and costs of the suit which is still pending in this honorable court.
2. That based on the advice of his lawyers, the applicant was informed that the entire estate of his late father has never been legally distributed.



3. That the applicant did not plead distribution of his late father's estate and neither did he disclose that the respondents were having a bigger share of the estate when others do not have anything.
4. That it is necessary for the applicant to amend his plaint to include the prayer for
5 distribution of the said estate.
5. That the amendment of the plaint in Civil Suit No. 0051 of 2022 will assist this honorable court in determining the real questions in controversy between the parties.
6. That the proposed amendment shall not prejudice the respondents/defendants in
10 any way (a copy of the proposed amended plaint is hereto marked "A").
7. That it is in the interest of justice and fairness that this application is granted.

In reply the 2nd respondent deponed an affidavit in reply on behalf of the respondents and stated as hereunder;

1. That the application is an afterthought, bad in law, misconceived, brought in bad
15 faith and in total abuse of court process as it contains falsehoods that make it suspect and defective for which their lawyers shall raise a preliminary point of law to the effect that the instant application has an illegal effect of substituting one distinctive cause of action for another.
2. That based on the advice of their lawyers, the cause of action in the instant suit is
20 for trespass to land at Nyangahya and the instant amendment is aimed at resolving matters of an estate which is way bigger than the suit land in the suit.
3. That based on the advice of their lawyers, the instant application is brought in bad faith. That the applicant seeks to have an estate distributed and yet he already claims land at Nyangahya as being his own land.

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Representation & hearing

The applicant was represented by Counsel Tuhangane Wilbroad of M/s Premier Advocates & Co. whereas the respondents were represented by Counsel Kinali Albert of M/s Aeton Advocates. The parties were directed to file written submissions but only the applicant
5 filed his final submission.

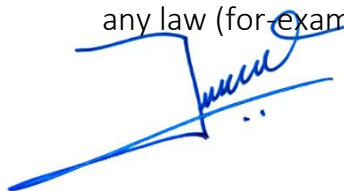
Applicant's Submissions

Counsel submitted that it is trite that the exercise by court of inherent powers saved under Section 98 of the Civil Procedure Act is a matter within the discretion of the court. Counsel added that in the exercise of this discretion, the court must act judiciously and according
10 to settled principles bearing in mind that the discretion to make must be based upon justice. Counsel also reiterated the provisions under Order 6 rule 19 of the Civil Procedure Rules.

In his submissions, counsel relied on one issue to wit: ***Whether the applicant should be granted unconditional leave to amend the plaint in Civil Suit No. 0051 of 2022.***

15 Counsel submitted that the principles governing amendment of pleadings were held in the case of ***Gasu transport services (Bus) Ltd Vs Obene (1990-1994)*** and are that; -

- a) The amendments should not work injustice to the other party.
- b) An injury which can be compensated by the award of costs is not treated as an injustice.
- 20 c) Multiplicity of pleadings should be avoided as far as possible and amendments which avoid multiplicity should be allowed.
- d) Application which is made malafide should not be granted.
- e) No amendments should be allowed where it is expressly or impliedly prohibited by any law (for example –limitation of actions).

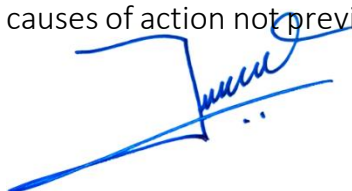


Counsel relied on paragraph 5 of the affidavit in support of the motion and submitted that it is just and equitable to allow the applicant amend his pleadings instead of filing a separate suit with issues that could easily be dealt with in this suit if leave for amendment is granted. Counsel stated that this will help this court to avoid multiplicity of pleadings that could be brought by different beneficiaries. Counsel submitted that this application was brought in good faith and is not aimed at shifting any goal post because the main suit has not taken off yet and the amendment shall not prejudice to the respondents/defendants.

Counsel relied on the case of *Lubowa Gyaviira & Ors Vs Makerere university; HCMA No. 0047 of 2009* where it was held that, “an amendment made before commencement of a hearing should be allowed if it does not prejudice the opposite party. Since this amendment is made in good faith, this court should be pleased to allow it.”

Counsel further submitted that this amendment is not barred by any statute and was brought without undue delay. Counsel added that the applicant instituted Civil Suit No. 0051 of 2022 and the cause of action therein was trespass on his portion of land hence the respondents’ assertion in their affidavit in reply that “*distributing the entire estate*” of late means a cause of action is misleading and that is better for an amendment to be made such that future suits are restrained.

Counsel argued that Order 6 rule 19 of the Civil Procedure Rules empowers this court to exercise its discretion to allow or deny amendments. Counsel added that such discretionary power is exercised judiciously with due consideration of all the facts and circumstances before the court. Counsel further submitted that it is trite law that timely amendment of the parties’ pleadings should not be denied if it is for the purpose of a just and final resolution of disputes between the parties before court. Counsel added that such amendment must be in the interest of justice across the board and must not flimsily open causes of action not previously before court but should be solely for clarifying and ensuring



that once they are brought, the matter before court and all related issues touching the subject matter concerning the parties shall be finally disposed of.

Counsel relied on the case of *Eastern Bakery Vs Castelino (1959) E.A 461* where it was held that, “amendments to pleadings sought before the 5th hearing should be freely allowed if
5 they can be made without injustice to the other side, and there is no injustice if the other side can be compensated by costs. It was further held that the principles applicable to amendments of complaints are equally applicable to amendments of defence”.

Counsel argued that in the instant application, the amendment is not introducing a new cause of action, it has been brought in good faith and there is no delay, the main suit has
10 not yet taken off and the amendment of the complaint shall not prejudice the respondents/defendants in anyway. In conclusion, counsel submitted that the application satisfies all the conditions and the principles laid out in decided cases and thus prayed that this court be pleased to allow the applicant amend his complaint.

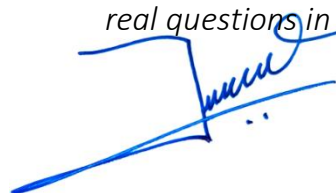
Court's Analysis

15 Having perused the pleadings of both parties in this application, and the submissions of the applicant, I have noted that the main issue before this court is; ***Whether the applicant herein should be allowed to amend his complaint.***

Order 6 rule 19 of the Civil Procedure Rules states;

“19. Amendment of pleadings.

20 *The court may, at any stage of the proceedings, allow either party to alter or amend his or her pleadings in such manner 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.”*



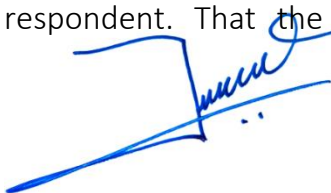
This court is clothed with the discretion to allow an amendment of pleadings at any stage as long as such amendment will not prejudice the other party. The court's discretion is subject to following the principles well laid out in the case of *Gaso Transport Services Ltd Vs Martin Adala Obene; SCCA 004/1994*, before allowing amendment including;

- 5 “a) *The amendment must not work an injustice to the other side.*
- b) *Multiplicity of proceedings should be avoided as far as possible and amendments which avoid multiplicity should be allowed.*
- c) *An application which is made malafide should not be granted.*
- d) *No amendment should be allowed where it is expressly or impliedly prohibited by the*
10 *law.”*

The purpose of amending the plaint in Civil Suit No. 0051 of 2022 as per the applicant is laid out under paragraph 1 of the chamber summons that there is new material evidence which shows that the estate of the late Yolamu Wandera has never been legally distributed and that the respondents are occupying approximately three quarters of the entire estate.

15 Further under paragraph 4 of the affidavit in support of the application the applicant states that he did not plead distribution of his late father's estate and neither did he disclose that the respondents were having a bigger share of the estate when others do not have anything. In reply however, the respondents contend that the proposed amendment is aimed at resolving matters of an estate which is way bigger than the suit land.

20 In the original plaint, the applicant instituted a suit against the respondents for trespass to land valued at Ugx 50,000,000/=, a permanent injunction, eviction order general damages, interest and costs of the suit. In the same suit, the applicant stated under paragraph 4(b-d) & 5 of the initial plaint that before the demise of the late Yolamu Wandera, he had several pieces of land occupied by his children including both the applicant and
25 respondent. That the applicant occupied the plot of land at Nyangahya, Masindi



municipality and is in possession of the land title having been handed over to him by his late father. That before the demise of the late Bagenda Yolamu Wandera, both the plaintiff and the defendants did not cross each other's pieces of land until after the deceased's demise when the respondents forcefully entered the suit land and evicted tenants among other acts thus preventing the applicant from developing the suit land.

I have perused the proposed amended plaint and noted that the changes made by the applicant are laid out in paragraph 3 of the proposed amended plaint stating that;

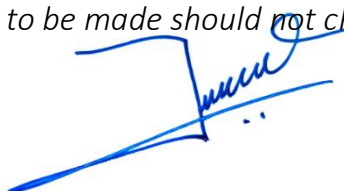
"The suit against the defendants is for trespass to land valued at Ugx. 50,000,000/=, permanent injunction, eviction order, an order for distribution and division of the estate of the late Bagenda Yolamu, general damages, interest and costs of the suit."

Furthermore, the applicant amended paragraph 4 which constitutes the facts constituting the cause of action under 4(b) that;

"The plaintiff was specifically gifted the plot of land at Nyangahya, Masindi municipality after being given a gift intervivo and the original certificate of title to the same before his late father passed on. (Copies of gift intervivo and certificate of title are hereto attached and marked "A" & "B" respectively)"

On the other hand, the respondents stated under paragraph 3 of their affidavit in reply that they would raise a preliminary point of law to the effect that the instant application has an illegal effect of substituting one distinctive cause of action for another. However, no submissions were filed in this court to expound on the intended preliminary point of law. Nonetheless that does not bar this court from proceeding with the determining this application.

In the case of *Namugenyi Margret Ntabaazi & Anor vs Nambi Stellah & 4 Ors; HCMA No. 0486 of 2016*, it was stated that, *"The other consideration is that the amendment sought to be made should not change the cause of action substantially."*



In *Major General David Tinyefuza vs. Attorney General; Const. Appeal No. 001/1997* a cause of action was defined to mean,

5 *"A cause of action means every fact, which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the court. In other words, it is a bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. ... It is, in other words, a bundle of facts, which it is necessary for the plaintiff to prove in order to succeed in the suit. But it has no relation whatsoever to the defence which may be set up by the defendant, nor does it depend upon the character of the relief prayed for by the plaintiff. It is a media upon which the plaintiff asks the court to arrive at a conclusion in his favour. The cause of action must be antecedent to the institution of the suit."*

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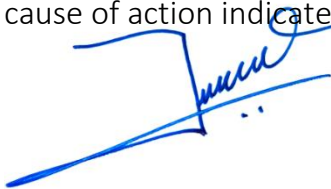
Furthermore, in *Tororo Cement Co Ltd v Frokina International Ltd; (Civil Appeal No. 002 of 2001) [2002] UGSC 24* the case of *Auto Garage Vs Motokov* was quoted where it was held that;

15 *"I would summarize the position as I see it by saying that if a plaint shows that the plaintiff enjoyed a right, that the right has been violated and that the defendant is liable, then, in my opinion, a cause of action has been disclosed and any omission or defect may be put right by amendment"*.

In the instant case, therefore, whether the applicant seeks to substitute one cause of action for another is entirely factual. The pleadings including the proposed amended plaint as already noted hereinabove indicate that the cause of action is for trespass to land valued at Ugx 50,000,000/=, a permanent injunction, eviction order general damages, interest and costs of the suit save for the fact that the applicants only seek to add to it that; ***"an order for distribution and division of the estate of the late Bagenda Yolamu Wandera"***. I do not think that this amounts to a fresh cause of action and neither do the facts constituting the cause of action indicate that it is another cause of action being raised. It instead indicates

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to be a relief being sought from this honorable court since the facts relating to the suit land stem from the estate of the late Yolamu Bagenda Wandera.

In addition to the above, I do not think that the respondents shall be prejudiced in any way since they are also beneficiaries, as is the applicant to the estate of the late Bagenda
5 Yolamu Wandera. The respondents also admit under paragraph 6(c) of their original
written statement of defence that the estate of their late father to date has never had a
duly appointed administrator and that as such, each beneficiary occupies estate property
he /she possessed before the death of the late Bagenda Yolamu Wandera. I do not think
that the current application has any effect on the pending suit neither will it cause any
10 prejudice to the respondents. This application is allowed with no orders as to costs.

I so rule.

15 Dated and delivered on this 27th day of October 2023.

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Isah Serunkuma
JUDGE