

(ARISING FROM LAND SUIT NO. 56 OF 2020)

VERSUS

- BEFORE: HON. JUSTICE LUBEGA FAROUQ**

1. The Applicant brought this Application by way of Chamber Summons under section 33 of the Judicature Act Cap. 13, section 98 of the Civil Procedure Act Cap 71, Order 6 rule 19 and Order 51 Rule 6 of the Civil Procedure Rules SI 71-1 as amended for orders that-
  - (a) Leave be granted to the Applicant/ Plaintiff to amend her plaint vide Civil Suit No. 59 of 2020.
  - (b) That the costs of taking out the Application be provided to the Applicant.
2. This Application is supported by the Affidavit in support sworn by the Applicant where she averred as follows-
  - (a) That she is widow and beneficiary of the estate of the late Kadali Kalifani Pesajange and on the 23<sup>rd</sup> day of November, 2020, she instituted Land Suit No. 59 of 2020 against the Respondent/Defendants with the help of M/S Bikala & Advocates her former lawyer. However, upon acquiring the services of the current lawyers of M/S Nappa & Co. Advocates, it was brought to her attention that material facts were fatally ignored and others misrepresented in her former plaint by her former lawyers.
  - (b) That upon being informed of the fatal ignorance, she immediately instructed her lawyers to amend the plaint to include the real issues in controversy for the determination by court and the amended plaint now encompasses all the material facts that were previously ignored and misrepresented to enable court determine the real questions in controversy.

- (c) That the Amendment does not alter or change the cause of action and neither does it in any way depart from the Applicant's original claim and shall not prejudice the Respondents in any way whatsoever which cannot be atoned by way of damages.
  - (d) That the Application is brought without inordinate delay and in good faith and prayed that in the interest of justice, the Application be granted.
3. In the affidavit in reply sworn by the 6<sup>th</sup> Respondent on behalf of the Respondents as per the certificate of authorization averred that-
- (a) That there were no material facts altered in the original plaint otherwise they would have stated them.
  - (b) The Respondent added that there is no evidence in the Applicant's affidavit in support which her former lawyers miss-guided and that it's a deliberate attempt to deny the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and the 5<sup>th</sup> Respondents their interests as beneficiaries of the estate of their late father Kadali Kalifani Pesajange.
  - (c) That the Applicant is introducing a new cause of action that is meant to bring about a miscarriage of justice as the Applicant is departing from her original claim.
  - (d) That this Application is frivolous and vexatious brought in bad faith with intent to prejudice the Respondents and delay the administration of justice aimed at changing the whole cause of action.
4. In rejoinder the Applicant re-instated the contents in the affidavit in support and added that there are material facts altered in the original plaint which were initially ignored and misrepresented by her former lawyers and that the 6<sup>th</sup> Respondent is misconceived as the proposed amendment neither introduces a new cause of action nor departs from the original claim which is premised on trespass to land.
5. Finally, that the Application is not frivolous nor vexatious as the same is brought in good faith and it is in the interest of justice that the same is granted.

6. **Legal Representation**

7. Counsel Makayi Samuel represented the Applicant whereas Counsel Murana Robert represented the Respondents. Both counsel made oral submissions and they are on court record

8. **Analysis of Court**

9. **Order 6 rule 19 of the Civil Procedure Rules SI 71-1** provides that-  
*"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.”*

10. In **Eastern Bakery -v- Castelino [1958] 1 EA 461**, the court interpreted the application of Order 6 Rule 18 of the Civil Procedure Rules of Uganda at the time, which provision is similar to Order 6 Rule 19 of the current Civil Procedure Rules above. In that case Sir Kenneth O'Connor P held that-

**“It will be sufficient, for purposes of the present case, to say that amendments to pleadings sought before the hearing should be freely allowed, if they can be made without injustice to the other side, and that there is no injustice if the other side can be compensated by costs: Tildesley v. Harper (1) (1878), 10 Ch. D. 393; Clarapede v. Commercial Union Association (2) (1883), 32 W.R. 262. The court will not refuse to allow an amendment simply because it introduces a new case: Budding v. Murdoch (3) (1875), 1 Ch. D. 42. But there is no power to enable one distinct cause of action to be substituted for another, nor to change, by means of amendment, the subject matter of the suit: Ma Shwe Mya v. Maung Po Hnaung (4) (1921), 48 I.A. 214; 48 Cal. 832. The court will refuse leave to amend where the amendment would change the action into one of a substantially different character: Raleigh v. Goschen (5), [1898] 1 Ch. 73, 81; or where the amendment would prejudice the rights of the opposite party existing at the date of the proposed amendment, e.g. by depriving him of a defence of limitation accrued since the issue of the writ: Weldon v. Neal (6) (1887), 19 Q.B.D. 394; Hilton v. Sutton Steam Laundry (7), [1946] K.B. 65. The main principle is that an amendment should not be allowed if it causes injustice to the other side. Chitale p. 1313.”** (Highlights are for emphasis)

11. In the instant case, the Applicant avers in her affidavit in support that she instituted Land Suit No. 59 of 2020 with her former lawyers. However, upon acquiring the current legal services, it was brought to her attention that material facts were fatally ignored and others misrepresented. She attached the amended plaint as annexure “A”
12. The Respondents however on the other hand averred that there are no material facts altered in the original plaint otherwise they would have stated them. They added that the Applicant is introducing a new cause of action that is meant to bring about a miscarriage of justice as the Applicant is departing from her original claim.
13. I have however looked at the amended plaint which is attached as annexure “A” to the affidavit in support and noted that the Applicant’s amendments are contained in paragraphs 5, 6 (b, c, d, e, g, h and k), 7, 8

and 11 (a-d) and her claim in those paragraphs is for 1 ½ acres situated at Kadama township, Kadama Town Council, Kibuku District which forms part of the estate of the late Kadali Kalifani Pesajange and 25 acres situate at Kategere Zone, Katyaime Parish, Nandele Sub-County, Kabweri County in Kibuku District which also forms part of the estate of the late Kadali Kalifani Pesajange which the Respondents jointly allegedly threaten to evict Applicant from. She prayed that the Respondents be declared trespassers.

14. I have also perused the original plaint and observed that under paragraphs 6 (b), (c), 8 (a), (b) and (c) the Applicant claimed for the same piece of land but the prayer of trespass was not envisaged in the original plaint.
15. It is trite that an amendment may be allowed by court at any stage of the proceeding for as long as it does not cause any injustice to the opposite party. An injustice which can be compensated for by way of costs is not injustice.
16. Secondly that an amendment should be allowed to avoid multiplicity of proceedings. See **Gasu Transport Services (Bus) Ltd v 160 Obene [1990-1994] EA 88.**
17. In the circumstance, the Applicant is allowed to amend the plaint to include the facts that were fatally ignored as indicated in annexure "A" to the affidavit in support.
18. Costs of this Application shall be in the cause

I so order.

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**LUBEGA FAROUQ**

**JUDGE**

**DATE: 25<sup>th</sup>/01/2024**