

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT NAKAWA
MISCELLANEOUS APPLICATION NO. 275 OF 2013
(Arising from C. S. No. 106/2013)

UMEME LIMITED
APPLICANT

V E R S U S

ONGUKO JIMMY
RESPONDENT

RULING

BEFORE: HON. LADY JUSTICE ELIZABETH IBANDA NAHAMYA

This Application was filed by way of Chamber Summons under Order 6 rules 19 and 31 of the Civil Procedure Rules S. I. No. 71-1 seeking orders that;

- 1) Leave be granted to the Applicant to amend the second paragraph of its Written Statement of Defence.*

- 2) Costs of the Application be provided for.*

The grounds of the application were that the amendment is necessary to resolve issues in controversy between the Parties to the suit, no injustice or prejudice shall be occasioned to the Respondent if the application to amend is granted. That the Application to amend the Written Statement of Defence is brought in good faith.

The application was accompanied by the Affidavit of Ms. Alice Nalwoga, Counsel for the Applicant in this matter. She deponed that in its written statement of Defence, the Applicant admitted paragraph 2 of the plaint

which was a description of the applicant as per Order VII Rule 1 (c) of the Civil Procedure Rules. Further that the Applicant did not comprehend the phraseology “*and discrimination lame*” as part of the description of the name, legal description and place of residence of the Defendant/Applicant.

That the Respondent’s allegations of discrimination were expressly denied in paragraph 4 (d) of the Written Statement of Defence. Ms. Nalwoga deponed that no injustice or prejudice will be occasioned to the Respondent if leave to amend is granted and that the application is brought in good faith.

Mr. Onguko Jimmy swore an Affidavit in reply. He deponed that the Application to amend the Written Statement of Defence is incompetent and devoid of any merit and is frivolous and a waste of Court’s time. Mr. Onguko deponed that there shall be injustice since the application came after the Respondent’s application for Judgment on admission dated 31st May 2013. He averred that the claims that the Applicant did not comprehend the phraseology of paragraph 2 of the plaint is not true.

PARTIES SUBMISSIONS

Both Parties filed Written Submissions. The Applicant on the issue of whether leave to amend the Written Statement of Defence should be granted to the Applicant submitted that Order 6 rule 19 of the Civil Procedure Rules gives the Court discretion to allow alterations or amendment of pleadings in such a manner and on such terms as may be just and necessary for the purpose of determining the real questions in controversy between the Parties.

Learned Counsel submitted that the Applicant did not comprehend the phraseology. “***Involved in the discrimination of the lame.***” He cited ***Mulwoza & Brothers Ltd vs. N. Shah & Ltd Civil Appeal No. 26 of 2010*** where it was stated:

“Amendments are allowed by Courts so that the real question in controversy between the Parties is determined and justice is administered without undue regard to technicalities in accordance with Article 126 (2) (e) of the Constitution.”

He also quoted a passage in ***Mulla, the Code of Civil Procedure, 17th Edition Volume 2, at pages 333, 334, and 335*** to the effect that leave to amend should be granted where no injustice will be caused to the opposite Party which cannot be cured by the costs or other remedy. It was also stated that leave to amend must always be granted unless the Party is acting malafide.

He also referred to ***Gasu Transport (Bus) Ltd vs. Obene [1990-1994]*** where it was also stated that amendments should not be allowed if prohibited by law. He argued that the application for leave to amend the Applicant’s Written Statement of Defence is necessary to enable justice to be done between the Parties. He also relied on ***Cropper vs. Smith (1883) 26 CH. D. 700 at page 711*** where it was held that the objection of Court is to decide the rights and controversies and not to punish them for the mistakes they make in the conduct of their cases.

Learned Counsel also relied on ***Musisi Gabriel vs. EDCO Ltd & Anor. Misc. Application No. 386 of 2013*** where Hon. Justice Joseph Murangira stated that amendments may be allowed in different circumstances but the principle is to do substantial justice and not to punish them.

He submitted that the application is brought in good faith and is meant to redirect the Court to determine the real issues in controversy and is meant to avoid multiplicity of proceedings. Further that the Applicant had met, the tests meant to govern the amendment of proceedings.

Learned Counsel submitted that the admission in issue did not amount to admission in law since the Applicant subsequently denied the allegations of discrimination.

The Respondent strongly opposed the Application. In his submissions, the Respondent submitted that Order 6 rule 8 of the Civil Procedure Rules requires that each Party must deal specifically with each allegation. That even if the Applicant admitted paragraph 2 of the plaint on discrimination and denied paragraph 4 of the plaint on discrimination, they are completely built on different foundations and cannot be taken to hold the same meaning. Further that there cannot be a half denial and an admission on the same fact of discrimination in the same suit.

The Respondent argued that this is proof to show that there is no genuine issue of material facts to maintain an answer. He cited the case of **Lissende vs. CAV Bosch Ltd: HL 1940** where it was held that a Party may not blow hot and cold on an issue in the same pleading. He also relied on **Ports Freight Services (U) Ltd vs. Julius Kamwany and others (1996) KALR 489** where it was held that the admission and half-hearted denials of the first Defendant did not disclose answers or defence to the claim. It was also held in that case that the first Defendant's defence was unmaintainable, frivolous, and vexatious and should be struck out. The Respondent also relied on section 57 of the **Evidence Act and Kampala District Land Board and Others vs. National Housing and Construction Corporation SCCA No. 2/2004** and submitted that facts once admitted need no further proof and no longer become an issue.

He submitted that the Applicant/Defendant admitted being involved in activities of discrimination of lame in Uganda which offends Article 21 (3) of the Constitution of the Republic of Uganda, and section (3) of the Employment Act 2006. He argued that the Applicant should not be granted any amendment in light of the illegal activities. He also relied on **Makula International Ltd. vs. Cardinal Nsubuga 1982 HCB** on this

point. He submitted that Parties are bound by their pleadings as per Order 4 rule 1 of the Civil Procedure Rules. He argued that there was no need for an amendment to the description already admitted to be true and correct by the Applicant.

He submitted that though amendments are not prohibited by law, the application to amend its pleadings after the Respondent's application for Judgment on admission is dishonest and creates injustice on the Respondent's right to be heard.

The Respondent also argued that errors and lapses should not debar a litigant from the pursuit of his rights. He relied on ***Re Christine Namatovu Tebajjukira 1992-93 HCB 85*** on this point.

Further that the allegation of denying the 2nd paragraph of the Written Statement of Defence is a new allegation of fact which will occasion injustice on the Respondent. The Respondent submitted that the Applicant had no excuse that they did not understand as the phraseology in paragraph 2 was written in clear English. Further that there is no evidence that the Respondent adopted that phraseology in order to mislead the Applicant.

The Respondent submitted that the Applicant only seeks to amend paragraph 5 in his application but has gone ahead to amend paragraph 5 as well. The Respondent also submitted that if the Court is to grant this amendment, then it should be on condition that the Applicant should cater for medical expenses of the Respondent in addition to paying his monthly salary prior to termination to support the Respondent who was incapacitated while working with the Applicant Company.

RULING

The brief facts are that the Respondent, Onguko Jimmy, filed a suit against Umeme Limited the (Applicant) for declaratory orders that the Plaintiff was

unlawfully terminated from his job, general damages, and special damages, punitive and exemplary damages among others. In the second paragraph of the plaint, the Plaintiff-Respondent (Plaintiff) stated;

“The Defendant is a Company incorporated under the law of Uganda and a limited liability involved in the supply of power and discrimination of lame in the public of Uganda whom the Plaintiff undertakes to effect Court process.”

The Applicant (Defendant) in his Written Statement of Defence admitted this 2nd paragraph of the plaint.

On this basis, the Respondent (Plaintiff) applied for a Judgment on admission under Order 13 rule 6 of the Civil Procedure Rules and Section 57 of the Evidence Act. He prayed that since the Applicant had admitted liability, the suit should be set down for formal proof to determine the extent of Onguko Jimmy’s claims against UMEME Limited. The Applicant, on being served with that application, now applies to amend the second paragraph of its Written Statement of Defence.

I have carefully considered the application, supporting affidavit and the submissions of Counsel. The issue for determination is whether the amendment should be allowed. The general rule is that amendments to pleadings should be allowed at any stage of proceedings where Court is satisfied that the amendment will assist Court and the Parties to determine the real question and no injustice will be occasioned on the opposite Party. *See Order 6 rule 19 of the Civil Procedure Rules. See also **Kampala City Council vs. Value Market Services Ltd (HCMA, 8/2007)**.*

Such amendments should be allowed freely unless done in bad faith or occasions prejudice or injustice on the opposite Party which cannot be compensated by way of costs. See **Eastern Bakery vs. Castelino**

[1958] EA 462 (CAU). Gaso Transport Services (Bus) Ltd vs. Obene [1990-1994] EA 88 at page 96.

In ***Gaso Transport Services (Bus) Ltd vs. Obene (supra)*** it was stated that four principles are recognised as governing the exercise of discretion to allow an amendment. These include that:

- 1) *The amendment should not work injustice to the other side. An injury which can be compensated by an award of costs is not treated as an injustice.*
- 2) *Multiplicity of proceedings should be avoided as far as possible and all amendments which arouse such multiplicity should be allowed.*
- 3) *An application which is made mala fide should not be granted.*
- 4) *No amendment should be allowed where it is expressly or impliedly prohibited by law.*

In the instant case, the Applicant seeks to amend paragraph 2 of its Written Statement of Defence. It is contended for the Applicant that the Applicant's Counsel did not comprehend the phrase '*involved in the discrimination of lame*' upon perusal of the plaint and thus ended up admitting the paragraph.

The Respondent strongly submitted against allowing the amendment and stated the Applicant had admitted being involved in discrimination while at the same time denying it in the same Written Statement of Defence. Further, that this would occasion an injustice on the Respondent since the Applicant had already admitted to the fact in paragraph 2 of the plaint and the Respondent had applied for Judgment on admission.

In this case, the amendment sought by the Applicant is to deny an allegation of fact in paragraph 2 of the plaint that the Applicant is involved in discrimination of the lame.

I am convinced by the Applicant's arguments that indeed this was a mistake/error on their part and as submitted by Counsel for the Applicant, the duty of the Court is determine rights of Parties and not punish them for their mistakes.

Further, I am of the opinion that the amendment sought will enable the Court and both Parties to effectively and completely adjudicate upon the issue of whether the Respondent was unlawfully dismissed by the Applicant and will highly help to avoid multiplicity of proceedings. The amendment will benefit the Respondent.

The Respondent's submissions that the Applicant has already admitted paragraph 2 and is thus involved in an illegality do not stand as the Applicant seeks to amend this very paragraph. The Respondent also sought to have the Applicant pay his medical costs and a salary until final determination of the suit was allowed as a pre-condition for allowing the application.

This prayer cannot be granted by the Court at this stage of trial as to do so would be similar to determining the Parties rights before trial and determination of the suit. This would eventually occasion an injustice on the Applicant. Since the Respondent is the Plaintiff, he should let the Court determine the rights of each Party in the main suit.

I have also perused a copy of the proposed amended Written Statement of Defence. It now reflects the stated amendment. Further, the Respondent's allegations that paragraph 5 of the original Written Statement of Defence has changed are not true. From my observations, it is only the numbering that changed but the substance of paragraph 5 which is reflected, as

paragraph 6 in the proposed amended Written Statement of Defence is still the same. The Applicant only added one more paragraph admitting paragraph 1 of the plaint thus changing the numbering of paragraphs.

I am also of the opinion that amending paragraph 2 of the written statement of defence will not introduce new allegations of fact. As already acknowledged by the Respondent, the Applicant had already denied being involved in discrimination in paragraph 4 of the original Written Statement of Defence. There is therefore no prejudice to the respondent.

In the circumstances, I accordingly allow the application. An amended Written Statement of Defence should be filed within 14 (fourteen) days from the date hereof.

Costs in the main cause.

Signed:.....

Hon. Lady Justice Elizabeth Ibanda Nahamya

J U D G E

21st October 2013