

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

CIVIL DIVISION

MISCELLANEOUS APPLICATION NO. 484 OF 2014

(Arising from HCCS 1565 of 2000)

PASCAL RWAKAHANDA ::::::::::::::: APPLICANT/PLAINTIFF

VERSUS

UGANDA POSTS & TELECOMMUNICATIONS

CORPORATION ::::::::::::::: RESPONDENT/DEFENDANT

BEFORE: HON. MR. JUSTICE STEPHEN MUSOTA

RULING

This is an application by a Chamber Summons under Section 98 of the Civil Procedure Act order 6 rules 19 and 31 of the Civil Procedure Rules for orders that:-

- (1) Leave be granted to the plaintiff to amend the plaint in the manner proposed in the attached amended plaint.
- (2) Costs of the application be provided for.

The grounds of the application are that:

- (a) The applicant/plaintiff was laid off during the restructuring of the Uganda Posts and Telecommunications Corporation (UPTC) on 30th April 1998.

- (b) He filed a Civil Suit against Uganda Posts but his retirement benefits were not properly calculated.
- (c) It is in the interest of justice that the application be allowed and the applicant amends his plaint.
- (d) That there is no prejudice to the defendant if that is done.

The Chamber Summons is supported by the affidavit of the applicant, Pascal Rwakahanda outlining the justification for amendment.

In the respondent's affidavit in reply deposed by Peter Kawuma an Advocate with the M/s Kiwanuka & Karugire Advocates, it opposed the application because the suit was filed sometime in November 2000 and the plaintiff has since adduced evidence and testified in the matter and was cross-examined without raising any further issues. That the application is an abuse of court process seeking to re-open his case. That there is no draft amended plaint attached to the application and there has been unreasonable delay by the applicant to bring this application. That the application only seeks to make a submission on behalf of the plaintiff in respect of his claim after he has adduced his evidence which is bad in law and is brought in bad faith.

At the hearing of the application court allowed both Mr. Babigumira learned counsel for the applicant and Mr. Ochaya Thomas for the respondent to file written submissions in support of their respective cases.

I have considered the application as a whole and the law applicable. I have also taken into account the submissions by respective counsel. Both learned counsel have correctly outlined the principles of law governing the grant of leave to amend the plaint. Order 6 rule 19 of the Civil Procedure Rules gives court discretion to allow alterations or amendment of pleadings in such a manner and on such terms as may be just and as may be necessary for the purpose of determining the real questions in controversy between the parties. leave to amend must be always granted

unless the party applying was action malafide and where it is not necessary for determining the real question in controversy between the parties.

In the case of **Gasco Transport Services (Bus) Ltd Vs Obene [1990-94] EA 88** relied upon by both parties, Tsekooko JSC (as he then was) stated the four principles that are recognized as governing the exercise of discretion, in allowing amendments as:

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

As rightly submitted by learned counsel for the respondent, if the amendment sought is a result of oversight then the oversight which occurred should be adequately explained and the amendment should be of considerable importance and provide a complete answer to the claim.

While having in mind the law and principles upon which an amendment should be allowed, I was not persuaded that the applicant has sufficiently justified amendment of pleadings 12 years after they were filed and even after his testimony had been concluded and cross-examination done. The oversight the applicant fronts as the reason for amendment has not been adequately explained. Apart from relying on the case law on how and why amendment should be allowed, the applicant has failed to explain why the application is crucial yet he could not realize that this claim was missing at the inception of his case.

According to the applicant's submissions at page 2 he states that, upon filing the suit against the respondent, his lawyers did not follow his instructions properly leading to the error in the plaint. Yet it is the same firm of advocates which has all along been prosecuting the suit to-date.

The proposed amendment appears to be presenting another claim yet the cause of action arose earlier than the year 2000. Introducing a claim more than 14 years after is barred by the limitation. This being the case, the proposed amendment is barred by law.

It was held in **Eastern Bakery Vs Castelino [1958] EA 641** *inter alia* that:

“..... The court will refuse leave to amend whereby the amendment will prejudice the rights of the opposite party existing at the date of the proposed amendment e.g. by depriving him of the defence of limitation.”

Whereas the applicant filed a proposed amendment in court which was received on 21st November 2014 accompanying the affidavit in rejoinder, the proposed amended plaint does not show the nature of amendment sought. There is no underlining to show what the amendment sought is. The effect of this omission was well articulated by Irene Mulyagonja Kakooza (as she then was) in the case **Plessy (PTY) Ltd Vs Mutoni Construction Ltd Miscellaneous Application No. 178 of 2011 (arising from) HCCS No. 131 of 2010**, as follows and I agree:

“It is well known and respected rule of practice that additions to a pleading on amendment have to be underlined. Deletions are on the other hand stricken through”

failure to do this usually misleads court since it is not easy to tell what the deletions or additions are to determine whether the amendment is necessary. This is likely to cause injustice to the respondent.

Consequently leave to amend the plaint at this late point in time will be refused. The application is dismissed with costs.

Stephen Musota

J U D G E

03.09.2014.