

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT JINJA**

MISC. APPLICATION NO. 253 OF 2013

5 (ARISING OUT OF JINJA HIGH COURT CIVIL SUIT NO. 28/2011)

JENNIPHER

NSUBUGA :::::::::::::::::::::::::::::::::::APPLICANT/PLAINTIFF

10

VERSUS

1. MOSES KALIISA KARANGWA

2. CHRISTOPHER

KIKKU

NSUBUGA:::::::::::::::::::::::::::::::::RESPONDENTS

15

BEFORE: THE HON. JUSTICE GODFREY NAMUNDI

RULING

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This Application is brought under the provisions of Section 98 of the Civil procedure Act, Section 33 of the Judicature Act and Order 6 Rules 19 and 31 of the Civil Procedure Rules.

25 The Applicant seeks orders that:

a) The Applicant/Plaintiff be granted leave to amend the original Plaint and/or pleadings filed in the main suit in a manner set out in the draft amended Plaint attached and marked DAP.

30 b) Costs of the Application be provided.

The grounds are contained in both the Chamber Summons and the affidavit of Jennipher Nsubuga dated 23rd November 2013.

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The essence thereof is that;

- Since the Institution of the head suit in 2011, new developments have come up necessitating the ammendment of the original Plaint and/or Pleadings.

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- Further, that the Applicant is how one of the Administrators of the Estate of Yonadabu Bidandi Nsubuga.

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- The intended ammendment is intended to expound on the particulars of unlawful disposition of the Estate's property, i.e. land, jurisdiction of Mukono Chief Magistrate's Court in issuing Letters of Administration to the first Defendant and entries made on the suit property/land.

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- It is prayed that the ammendment is necessary for purposes of properly and effectually determining the real questions in controversy between the parties and that it will not prejudice or cause injustice to the Respondents.

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The first Respondent filed an affidavit in reply in which he avers that his written statement of defence puts up a defence of bona fide purchaser for value, that the suit was
5 time barred and that the Plaintiff had no locus standi to file the suit in respect of the suit land. He depones that the intended ammended Plaint is intended to defeat the said defence.

10 Further that the Plaint is introducing a new cause of action and the statutory defence of limitation by introducing Letters of Administration which were not in existence at the time of filing the suit. That the intended ammendment will prejudice the defence case.

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Both Counsel requested and were allowed to file written submissions.

For the Applicant, it has been submitted that the intended
20 ammendment has nothing to do with the Respondent's defence of bona fide purchaser for value and that the said Respondents can include all the defences they wish to the ammended Plaint.

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Reference has been made to various authorities which include:

1. Haji Musa Ntale Vrs. Cairo International Bank.

**2. Capt. Phillip Ongom Vrs. Catherine Nyero SCCA
5 31/95.**

**3. British India General Insurance Co. Ltd. Vrs. G.M.
Parma (1966) E.A.**

All these authorities are about the power and authority of the Court to allow any ammendment and that there is no
10 limit to such power.

It is submitted that the ammendment is intended to expound on the particulars of unlawful disposition of the estate's property by the 2nd Respondent to the 1st Respondent. The
15 leading authority of **GASO Transport Services Vrs. Martin Adala Obene - CA 4/94** was also cited.

It emphasises the principle that the object of Court is to decide the rights of the parties and not to punish them for
20 the mistakes they make in the conduct of their cases by deciding themselves than in accordance with their rights.

It was also submitted that it is not true that the ammendment is intended to introduce a new cause of
25 action. That it is intended to expound on particulars of

unlawful disposition of the Estate's property, jurisdiction of Mukono Chief Magistrate's Court in issuing Letters of Administration to the 2nd Respondent and to enable Court to determine the real questions in controversy between the parties. **Mulwooza and Brothers Vrs. Shah & Co. Ltd SCCA 26/2010 HCB Vol. 1 (2011)** was cited in respect of introduction of new causes of action through ammendment of the Plaint. It was held that the Civil Procedure Rules do not bar introducing a new cause of action through an ammendment to a Plaint.

That Order 2 Rule 4 (i) of the Civil Procedure Rules allows uniting in the same suit several causes of action against Defendant or Defendants. This is intended to guard against multiplicity of suits. However an ammendment that would be prejudicial to the other party's case will not be allowed unless such prejudice can be sufficiently compensated for by costs.

For the Respondents, it has been submitted that the Applicant's Counsel specifically alluded to the defence (Paragraph 6 of the Affidavit in support) as the reason for the intended ammendment.

It is accordingly submitted that the ammendment is intended to defeat the defence i.e. defence of limitation, defence of bona fide purchaser for value, and the defence that no cause of action is disclosed by the Plaintiff.

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Further that Order 6 Rule 19 of the Civil Procedure Rules allows ammendment of pleadings but the Courts have put parameters under which such ammendment may or may not be allowed. That the first Plaintiff had issues of locus standi
10 by the Applicant.

The intended ammended Plaintiff seeks to defeat that issue raised by the Defendants by introducing Letters of Administration that were issued after the filing of the suit.
15 (That the suit was filed in 2011 while the Letters of Administration were granted on 18/6/2013).

It is submitted that there are also issues of limitation. That the cause of action started to run in 1998 and the suit was
20 filed after the 12 years. The intended ammendment now claims the Plaintiff discovered the sale of the suit property between 2005 - 2008.

That if the 1st Defendant obtained Letters of Administration
25 in 1998 then the limitation period expired before filing of the

suit in 2011 and even if it was under Tort then the 6 years expired in 2004. The Plaintiff was filed out of time and cannot be amended.

5 It is also submitted that in the first Plaintiff, the Plaintiff pleaded for cancellation of the 2nd Defendant's Title. However, no particulars of fraud were pleaded, a mandatory requirement under Section 176 of the Registration of Title Act.

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It is submitted that the intended amendment is unfair and would prejudice the Defendants by defeating the Defendants' defence.

15 Reference was made to some authorities namely:

1. **Muhammad B. Kasasa Vrs. Jaspheer Buyoya Sirasi Bwogi CA No. 42/2008**, where it was held that a Plaintiff which is time barred cannot be amended.
- 20 2. **Ntamba Vrs. AG (1992) KALR 90**, where it was held that an amendment of a Plaintiff that does not disclose a cause of action against the Defendant is unjust and will not be allowed.

3. **Matagala Vincent Vrs. URA MA No. 25/2013**, no ammendment would be allowed which would prejudice the rights of the opposite party and should not cause injustice.

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(a) That an intended ammendment should not be used to fill the gaps.

10 A perusal of the Applicant's rejoinder appears to go into the details of the merits of the Application some of which is not contained in the Affidavit in support or the intended Plaint. For example it is argued ***that the transaction of sale of the suit property was kept a secret and uttermost confidentiality.***

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The above is neither in the Application, Affidavit or intended Plaint. It is a submission from the bar.

20 Regarding the merits of this Application, this has to be looked at with regard to the Applicant's intended Plaint - Paragraph 5 (a) which claims that the Plaintiff in 2005 - 2008 discovered that the suit land was illegally sold to the 2nd Defendant.

25 This is a departure from the original Plaint that claims that the 1st Defendant sold 600 acres to the 2nd Defendant in 1999.

30 The above 2 positions when seen in light of the Respondents' defence of limitation of time clearly indicate that paragraph 5 (a) of the intended ammended Plaint is

aimed at sanitizing what is claimed in paragraph 5 (b) and (c) of the original Plaintiff. In short it intended to bring the suit within and not outside the limitation period provided under Section 5 of the Limitation Act.

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The claim that the Applicant obtained Letters of Administration has the same effect since her locus standi in the suit was challenged in paragraph 6 of the written statement of defence.

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As a result she conveniently obtained Letters of Administration in August, 2013 in order to clean up her locus in the matter.

15 All the incidents cited demonstrate bad faith on the part of the Applicant and lead to no other conclusion than that the intended ammendment will prejudice the Respondents' defence.

20 The Courts have consistently laid down the requirements or parameters within which ammendment of pleadings will be allowed. While they generally agree that all issues between the parties should be investigated and adjudicated upon, and that the justice of the case should be dealt with, the
25 intended ammendments should not occasion injustice to the other party neither should the Defendants' defence be prejudiced.

Ref: **GASO Transport Services Vrs. Adala Obene**
30 **(supra)** has laid down the following as the principles governing the exercise of discretion in allowing ammendments:

- (a) The ammendment should not work injustice to the other side. An injury which can be compensated by costs is not treated as an injustice.
- 5 (b) Multiplicity of proceedings should be avoided as far as possible and all ammendments which would avoid such multiplicity should be allowed.
- (c) An Application should not be made malafide.
- 10 (d) No ammendment should be allowed where it is expressly prohibited by Law.

In the instant case, I see no injury that is capable of being compensated by costs.

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Secondly, the intended ammendment after observing the written statement of defence and then seeking to fill in the gaps in the Plaintiff's case as discussed earlier is not only malafide, but is also aimed at prejudicing the Defendants' defence.

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Thirdly, it is clear that a Plaint that is time barred cannot be ammended as the Applicants have tried to do. **(Ref: Muhammad Kasasa Vrs. J. Buyoya (supra)).**

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I accordingly find this Application misplaced and lacking in merits. It is disallowed and dismissed with costs.

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Godfrey Namundi
JUDGE
7/5/2015

7/5/2015:

Sebanja for Applicant

Applicant present

Amujo Kevina for Respondents

5 Respondents absent

Court: Ruling delivered in Court.

10 **Godfrey Namundi**

JUDGE

7/5/2015

15 **ORDER:** It is further ordered that should any of the parties wish to appeal against this Ruling, leave to do so is granted.

20 **Godfrey Namundi**

JUDGE

7/5/2015.