

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT KABALE
CIVIL SUIT NO.14 OF 2016

1. ARIHO EMMANUEL

PLAINTIFFS

2. KYASIMIRE ZION

VERSUS

1. CENTENARY RURAL DEVELOPMENT BANK LTD

2.MURAMBI AUCTIONEERS AND BAILLIFS

DEFENDANTS

3. ANDREW BYOMUGABI

BEFORE HON.JUSTICE MOSES KAZIBWE KAWUMI

RULING

This is a ruling arising from a Preliminary objection raised by Counsel for the 1st and 2nd defendants to the effect that the Amended Plaintiff and Chamber Summons filed by the Plaintiffs be struck off the record for they were filed without leave of Court.

The background is that on the 18th/05/2016, the Plaintiffs filed a Suit against the three defendants and also filed Chamber Summons for a temporary injunction and a Notice Of Motion for an Interim Order. The Application for the Interim Order was heard by the Registrar on the 8th June 2016.It was not granted. The Application for a temporary injunction was fixed for hearing on the 13th July 2016.

The 1st and 2nd Defendants filed a joint Written Statement Of Defence on the 25th May 2016. On the 10th /06/2016 ,the Plaintiffs filed an Amended Plaintiff and Amended Chamber Summons .The Amended Pleadings introduced a 4th Defendant not originally sued by the Plaintiffs.

At the hearing of the Application for a temporary injunction Mr. Bemanyisa Adonijah appeared for the Applicants while Mr. Nsibambi Lwanga appeared for the 1st and 2nd Respondents. The 3rd and 4th Respondents' did not file Affidavits in reply to the Application and have to date not file any Written Statements Of Defence.

Counsel for the 1st and 2nd Respondents raised a preliminary Objection contending that the Amended Complaint and the Chamber summons were filed outside the set 14 days from the date their Written Statement Of Defence was filed and hence offended Rule 20 of Order 6 of the Civil Procedure Rules.

It was further submitted that the Amendment was targeted at defeating their Defence which is that the Complaint as filed did not disclose a cause of action against them. I was urged to strike out the Amended Pleadings since leave of Court was not sought before filing them.

In reply, it was submitted by Counsel for the Applicants that he had made inquiries from Counsel who had earlier been instructed to handle this case as to whether a Written Statement Of Defence had been filed. He was told that none of the Defendants had filed and hence he proceeded to file the Amended Pleadings. Counsel further submitted that he had personally perused the Court file on the 8th/06/2016 and had found no Written Statements Of Defence on the Court file.

Counsel further argued that he had not been accorded a chance to know whether the alleged Written Statement Of Defence had been served on Counsel originally instructed in this matter, and if so when that was done. He doubted whether filing fees had been paid and submitted that filing of a Written Statement Of Defence is only deemed to be complete when fees are paid and service of the same is effected on the opposite party.

In the alternative, Counsel submitted that since the 3rd and 4th Defendants had not filed their Written Statements Of Defence by the 10th/06/2016 the Plaintiffs were within the 21 days rule afforded by Rule 20 of Order 6 of the CPR. He urged Court to only strike out the Amended Pleadings as against the 1st and 2nd Defendants/Respondents who had filed but not against the 3rd and 4th who had not filed.

As a general rule amendment of pleadings is allowed to enable the real questions in issue between the parties to be raised in the Pleadings and where the amendment will not occasion

injustice to other party, except such as can be compensated for by costs. Amendment to pleadings is also allowed to avoid multiplicity of proceedings and more so when the Application is made before hearing has commenced.

Courts however are not inclined to grant leave to amend where the intended amendment is *malafide* or when it is expressly or impliedly prohibited by any law. **(See: SCCA No.14/1994: Gaso Transport services Ltd Vs Martin Adala Obene)**

An amendment will also not be allowed where it will substantially change the cause of action into a different one or will deprive the defendant of an accrued right. **(See: HCMA No.203/2007,Edward Kabugo Vs Bank Of Baroda)**

Amendment Of Pleadings is provided for by rule 20 of Order 6 of the Civil Procedure Rules which provides;

“ A plaintiff may, without leave, amend his or her plaint once at any time within twenty-one days from the date of issue of the summons to the defendant or, where a written statement of defence is filed, then within fourteen days from the filing of the written statement of defence or the last of such written statements.”

In the instant case Summons were issued on the 18th/05/2016 and service effected on the 1st and 2nd Plaintiffs on the 19th/05/2016. The 1st and 2nd Defendants filed their Written Statement Of Defence on the 25th/05/2016 which was endorsed by the Registrar on the same date and fees paid vide PRN 2160002588991. The Court receiving stamp for the same date is visible on the document. It is therefore not correct for Counsel to allege that there was no filing on the record when he perused the file on the 8th/06/2016.

The Amended pleadings were without leave of Court filed on the 10th/06/2016 which is clearly beyond the 14 days allowed under the Rule. The Amended Plaint and Chamber Summons are thus incorrectly on the Court record and are hereby struck off the record as against the 1st and 2nd Defendants.

It was argued by Counsel for the Plaintiffs/Applicants' that since the 3rd and 4th Defendants had not filed responses by the 10th/06/2016 when the Amended Pleadings were filed, the Objection raised for the 1st and 2nd Defendants should not affect them. The effect of this would be to require the 3rd and 4th defendants to answer to the Amended Pleadings. I find this reasoning rather superficial. Parties cannot answer to different sets of pleadings in the same

Cause. Even then the impugned Pleadings no longer form part of the record in this Suit to be replied to by any party.

Summons were issued on the 18th/05/2016 and under O.5 r1 (2) service had to be effected within 21 days from the date of issue. The Summons expired on the 08th/06/2016 before service on the 3rd and 4th Defendants'. The 21 days within which a Plaintiff may amend without leave as provided for under O.6r 20 apply before expiry of Summons. It is therefore not tenable to argue that the 3rd and 4th Defendants can answer to the Amended Pleadings which in any case are struck off the record.

The Preliminary Objection is upheld and the Amended Plaint and Chamber Summons are struck off the Court file. Hearing of the Application may proceed on the basis of the Plaint and Chamber Summons filed on the 18th /05/2016 . The Plaintiff is at liberty to properly apply for amendment. I award costs to the Plaintiffs.

MOSES KAZIBWE KAWUMI

JUDGE

21st JULY 2016.