

IN THE HIGH COURT OF UGANDA AT KAMPALA

CIVIL DIVISION

MISC. APPLIC. NO. 868 OF 2016

HCCS. NO. 64 OF 2012

WARID TELECOM LIMITED.....APPLICANT

V

ROBERT BYARUHANGA.....RESPONDENT

BEFORE HON LADY JUSTICE H. WOLAYO

RULING

The applicant seek an order under order 6 rule 22 and 31 of the CPR and section 98 of the CPA that the amended plaint filed by the respondent on 7.8.2014 be disallowed.

The main grounds of the application are that

- 1) the amendments to the plaint change the original action into one of a substantially different character;
- 2) the amendments are prejudicial to the applicant's existing rights at the date of the proposed amendment by depriving the applicant of the accrued defence of limitation.

The application was supported by affidavit of Katumba Hudson Andrew .

The respondent filed an affidavit in reply in opposition to the application. His main defense of the amendments is that after filing the plaint, he cross checked and found errors in dates and missing facts that necessitated amending the plaint. Furthermore, that an amendment can be permitted at any stage of the proceedings and finally that the amendment followed a court order permitting him to file an amended plaint.

Mr. Emuron of Katende, Ssempebwa & co. Advocates appeared for the applicant while Mr. Kazibwe of Magellan Kazibwe & Co. Advocates appeared for the respondent.

Both counsel made oral submissions and availed authorities that I have carefully considered.

Order 6 rule 19 empowers the court to allow an amendment to pleadings at any stage of the proceedings for the purpose of determining the real questions in controversy between the parties.

Order 6 rule 20 enables the plaintiff to amend pleadings without leave within 21 days from date of issue of summons or within 15 days from date of filing the defence.

Order 6 r 22 allows the opposite party to apply to the court to disallow an amendment filed under order 6 r 20 or 21 and the court if satisfied that the justice of the case requires it, may disallow the amendment or any part of it.

In the instant case, the applicant filed his plaint on 27.2.2012 and the respondent filed their defence on 15.3.2012. Order 6 rule 21 permitted the plaintiff to amend without leave by 29.3.2012 latest. Instead the plaintiff filed an amended plaint without leave on 7.8.2014, two years and five months after time allowed for them to file without leave had lapsed.

The above notwithstanding, court is empowered under order 6 rule 19 to allow an amendment at any stage of the proceedings for the purpose of resolving the real questions in controversy.

For the court to exercise this power, the party seeking to amend must seek leave whether orally or in writing.

On 5.5.2014, when both counsel appeared before Justice Kabiito, the case was adjourned

‘in order to enable counsel for the plaintiff to consider amendment of plaint and related response by counsel for the defendant’.

The court did not direct the plaintiff to amend the plaint but directed him to take the necessary steps which meant filing a formal application so counsel for the defendant could respond.

On 28.9.2016 when parties appeared before me, I observed that an amended plaint was on record and directed counsel to serve it on the defendant. This did not mean that leave was granted to file an amended plaint.

But even if leave was granted, the opposite party may object to its admission for legitimate reasons.

I will now discuss the submissions of both counsel.

The thrust of Counsel for the applicant's arguments is that the impugned amendment eliminates the applicant's defence to the suit that was based on facts pleaded in the plaint filed in February 2012.

Basically, in the first plaint, the plaintiff sued the defendant in tort to the person and conversion of property for events that were said to have occurred in July 2008 . The Limitation Act in section 3 limits actions in tort to six years and if the action includes damages for personal injuries, the action must be brought within three years from date when cause of action arose.

In the plaint filed on 27.2.2012, the plaintiff prayed for damages for unlawful arrest, illegal detention , malicious prosecution, embarrassment and loss of business.

The cause of action was said to have arisen in July 2008 (para. 3 of the plaint).

That means time for an action would expire in July 2014. Therefore, by 27.2.2012 when the plaint was filed, the plaintiff was within time. There was no claim for personal injuries in the plaint filed on 27.2.2012.

In the amended plaint filed on 7.8.2014, the plaintiff pleads in para. 4c that he was assaulted with slaps and kicks by agents of the defendant . In para. 8 (e) , he pleads special damages for medical treatment.

Clearly, the said new facts introduce not only a new cause of action, but one which is out of time . Claims for personal injuries must be filed within three years from the date when cause of action arose.

Furthermore, the amended plaint contains detailed evidence instead of material facts that the plaintiff intends to rely on. The plaint therefore offends order 6 rule 1 which provides that

'every pleading shall contain a brief statement of the material facts on which the party relies for a claim or defense , as the case shall be .'

The amended plaint that has seven pages in font 12 is so detailed that it makes it difficult for the defendant to develop a defense.

With respect to the changed date to read October 2008 instead of July 2008, this is an amendment that does not prejudice the defendant because the original plaintiff was filed within time.

Consequently, I disallow the amended plaintiff for offending order 6 rule 1 and for including a claim for personal injuries thereby bringing the new cause of action outside the three years allowed by section 3 of the Limitation Act.

As for the date when the cause of action arose, the original plaintiff will be read as if the events happened in October 2008 and not July 2008. This is because a judgment by **Buganda road court in criminal case No. 1250 of 2008 between Uganda v Khatondi and Byaruhanga Robert** records that the events in issue in this suit happened in October 2008. The judgment was annexed to the chamber summons.

The application to disallow the amended plaintiff is allowed with costs to the applicant in any event.

DATED AT KAMPALA THIS 4TH DAY OF APRIL 2017.

HON. LADY JUSTICE H. WOLAYO