

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT FORT PORTAL
MISCELLANEOUS APPLICATION NO. 0060 OF 2019

(Arising from HCT – 01 – CV – CS – 002 of 2019)

- 5 **1. TEREZA KABADAKI**
 - 2. KONSITANSIO KABANYOMOZI**
 - 3. LUCKY SYLVIA**
 - 4. FRIDAY ROBERT**
 - 5. MUCWANKAMBA HAPPY**
- }**APPLICANTS**

10 **VERSUS**

MOSES KATUMBURA.....RESPONDENT

BEFORE: HIS LORDSHIP HON. MR. WILSON MASALU MUSENE

Ruling

15 The Applicants represented by M/s Mugabe-Luleti & Co. Advocates brought this application by way of Chamber Summons under **Section 33** of the Judicature Act and **Section 98** of the Civil Procedure Act and **Order 6 Rule 19** and **31** of the Civil Procedure Rules for orders that; the Applicants be granted leave to amend their plaint filed in this Honourable Court, for costs of the application and any orders this Court deems fit.

20 The Application is supported by an affidavit sworn by the 1st Applicant and the grounds briefly are as follows;

- a. That the 1st and 2nd Applicants filed a suit in this Honourable Court vide High Court Civil Suit No. 002 of 2019 which is pending determination.
- b. That the 1st and 2nd Applicants are desirous of amending their Plaint to add some other affected beneficiaries who have been affected by the Defendant’s actions.
- 25 c. That the amendment shall not alter the cause of action in any way.

d. That it is just and equitable that this application is granted.

Counsel for the Applicants in his submissions quoted **Order 1 Rule 1** of the Civil Procedure Rules which provides that all persons may be joined in the same suit as Plaintiffs in whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist whether jointly, severally or in the alternative, where, if those persons brought separate suits, any common question of law or fact would arise.

Counsel for the Applicants submitted that given the fact that the Letters of Administration granted to the 1st and 2nd Applicants were revoked they can no longer represent the interests of other affected beneficiaries among whom are the 3rd, 4th and 5th Applicants hence warranting their personal representation and appearance thus the need to amend the Plaintiff.

Further, that granting the Application will enable Court determine the real questions in controversy between the parties in finality so as to avoid multiplicity or Duplicity of suits arising from the same transaction or series there from since the subject matter is the same. Reference was made to the case of **Gaso Transport Services (Bus) Ltd versus Obene [1990-94] E.A 88** cited in the case of **Lea Associates Limited versus Bunga Hill Limited 2008** which laid down four principles that are recognised as governing the exercise of the discretion in allowing amendments of the pleadings as follows;

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

Counsel for the Applicants concluded that granting the instant application will not prejudice the Respondent and not injustice will be caused as the application was also brought in good faith.

M/s Ngamije Law Consultants & Advocates who represented the Respondent on the other hand contended that the authority as cited above does not pass the test in allowing amendments and as is the Plaintiff is incurably defective. That the proposed amended plaintiff introduces particulars of fraud which never existed in the Plaintiff before Court and a party is

bound by their pleadings. In the circumstances the Plaint should be withdrawn or struck off the Court record. Counsel for the Respondent added that the suit is time barred under **Section 20** of the Limitation Act which provides the time limit for such cases as not exceeding 12 years.

5 Further, that there is no need for amendment since the Applicants did not sue as Administrators but rather in their individual capacities and there is no threat of multiplicity of suits as claimed by Counsel for the Applicants.

Counsel for the Applicants in rejoinder submitted that on the issue of failure to particularise the ingredients distinctively was a mere technicality curable under **Article 126(2) (e)** of the
10 Constitution of the Republic of Uganda, 1995. That the Applicants suit is also not time barred since they found out about the trespass in 2016 and this is covered under **Section 25** of the Limitation Act in instances involving fraud.

This Court has carefully considered the submissions on both sides in this Application. Counsel for the Respondent has raised a number of technical issues which are not the concern
15 of this Court at this stage. Those may be considered later on. But as of now, and in conformity with Order 1 Rule 1 of the Civil Procedure Rules, I find that no prejudice will be caused to the Respondents when this Application is allowed. It will enable the Court to determine the real questions in controversy between the parties once and for all.

I therefore exercise this Court's powers under Section 98 of the Civil Procedure Act and
20 Section 33 of the Judicature Act to allow this application. Costs to be in the cause.

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WILSON MASALU MUSENE

JUDGE

25 **1/10/2019**