

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT FORT PORTAL  
MISCELLANEOUS APPLICATION NO. 92 OF 2021  
5 (ARSING FROM CIVIL SUIT NO. 0030 OF 2021)

1. C25 AUTO PARTS LTD  
2. FRANCIS WAKABI :::::::::::::::::::::::::::::::::::::: APPLICANTS

VERSUS

1. MR. ESAU TWEBAZE  
10 2. HILMARK CO. LTD \*  
3. MR. BWAMBALE JONENI :::::::::::::::::::::::::::::::::::::: RESPONDENTS

BEFORE HON. JUSTICE VINCENT WAGONA  
RULING

15 **Introduction:**

The applicants commenced this application under Order 6 Rules 19 and 31 of the Civil Procedure Rules for orders that:

- (a) The Applicants be granted leave to amend their Plaintiff in order to assist  
20 court to effectively determine the real issues in controversy between the parties.  
(b) That the applicant be awarded costs of taking out the application.

**Background:**

The brief background as discernable from the pleadings is that the applicant filed  
25 Civil Suit No. 30 of 2021 which is pending determination by this court contending



that the execution in furtherance of the Decree by the Chief Magistrate's Court of Kasese for sale of an auto – mobile, Iveco Truck Registration No. UAY 199B valued at UGX 40,000,000/= amounted to over execution. That upon execution, the Respondents never filed and served a copy of the return onto the Applicants who discovered the same during the consideration of Summons for Directions by Court. That the Applicant's counsel discovered that there are important matters that were not addressed in the plaint earlier filed which will assist court in arriving at a just decision. That the amendment intends to capture the facts thus:

- (a) That an execution report/return purportedly filed on the 12<sup>th</sup> day of February 2019 wherein the 3<sup>rd</sup> Respondent confirms that the 2<sup>nd</sup> Applicant fully settled the decretal sum to the judgment debtor and the same was acknowledged.
- (b) That despite having settled the decretal sum, the 1<sup>st</sup> and 3<sup>rd</sup> Respondents proceeded to sell the 2<sup>nd</sup> Applicant's automobile without recourse to having their decretal sum settled.
- (c) That the subject matter wherein the automobile was sold, was unscrupulous since the Applicants had fully paid the decretal sum and these facts need to be captured for court to effectively determine the issues in controversy
- (d) That having sold the Applicant's automobile at UGX 40,000,000/= the applicants were denied of their valuable property and lost earning which has to be specifically pleaded thus creating the need to amend the plaint to include these facts to aid court in determining all questions in controversy.
- (e) That the proposed amendment will not prejudice the Respondent and that it is in the interests of justice that the application is allowed.

**Representation:**



The Applicant was represented by M/s LOI Advocates. The Respondent did not file an affidavit in answer to the Chamber Summons and thus was not represented for purposes of this Application.

5 The Application at hand was served upon Counsel for the Applicant on the 29<sup>th</sup> day of August 2022 and the submissions on the 22<sup>nd</sup> September 2022. Since then Counsel did not make an effort to file an affidavit in reply or offer an explanation to court as to why he was unable to do so. Court issued Directions over the application at hand on 3<sup>rd</sup> of August 2022 which were never complied with by the Respondents' Counsel. Therefore, since the Summons were effectively served  
10 upon the Respondents through their Lawyer and no answer has been filed by any of them, I shall proceed under Order 9 Rules 11(2) of the Civil Procedure Rules to determine the case at hand exparte. The applicants filed their written submissions which I have considered together with the pleadings and the annexures thereto.

15 **Issues:**

I have framed one issue for determination:

**Whether the applicants should be granted leave to amend their plaint.**

**Resolution:**

20 Counsel for the Applicant submitted that Sections 98 and 33 of the Civil Procedure Rules empower court to make any order for purpose of ensuring that justice is done and to avoid multiplicity of suits. He submitted that Order 6 Rule 19 of the Civil Procedure Rules grants Court unlimited jurisdiction to grant parties leave to amend their pleadings if it is intended to ensure that all issues in controversy are fully  
25 investigated and to avoid multiplicity of suits. Counsel cited the decision in **Gasso Transporter Services Limited Vs. Martin Adala Obene, SCCA No. 4 of 1994**



that enumerates the grounds upon which leave may be granted or denied. These include:

- (a) That the amendment should not occasion injustice to the opposite party.
- (b) The amendment should be granted if it is in the interest of justice and to  
5 avoid multiplicity of suits.
- (c) Amendment should be made in good faith.
- (d) Amendment must not be expressly or impliedly prohibited by law.

Counsel invited Court to consider the grounds particularized in the affidavit in support of the application.

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**Consideration by Court:**

Under Order 6 Rule 19 of the Civil Procedure Rules: "*Court may at any stage of the proceedings, allow either party to alter or amend his or her pleadings in such a manner and on such terms as may be just, and all such amendments shall be made  
15 as may be necessary for the purpose of determining the real questions in controversy between the parties*"

In **Cropper v Smith (1884) 26 Ch. D. 700 (CA)**, where **Bowen LJ** stated thus:  
20 "*Now, I think it is a well-established principle that the object of Courts is to decide the rights of the parties, and not to punish them for mistakes they make in the conduct of their cases by deciding otherwise than in accordance with their rights. Speaking for myself, and in conformity with what I have heard laid down by the other division of the Court of Appeal and by myself as a member of it, I know of no kind of error or mistake which, if not fraudulent or intended to overreach, the  
25 Court ought not to correct, if it can be done without injustice to the other party. Courts do not exist for the sake of discipline, but for the sake of deciding matters in*



controversy, and I do not regard such amendment as a matter of favour or of grace. Order XXVIII, rule 1, of the Rules of 1883, which follows previous legislation on the subject, says that, "All such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy  
5 between the parties. It seems to me that as soon as it appears that the way in which a party has framed his case will not lead to a decision of the real matter in controversy, it is as much a matter of right on his part to have it corrected, if it can be done without injustice, as anything else in the case is a matter of right... The question seems to me to be this, Can you by the imposition of any terms place the  
10 other side in as good a position for the purpose of having the question of right determined as they were in at the time when the mistake of judgment was committed? It does not seem to me material to consider whether the mistake of judgment was accidental or not, if not intended to overreach. There is no rule that only slips or accidental errors are to be corrected. The rule says, "All such  
15 amendments shall be made as may be necessary for the purpose of determining the real questions in controversy."

The import of amendment is to allow parties plead particulars or facts that will enable courts effectively address all questions in controversy. It is rooted in the  
20 doctrine of fair hearing which entails hearing the parties' claims without regard to simple technicalities. Leave to amend should not be treated as a matter of favour or grace. It is a right of a party to the proceedings to be granted leave as long as it is intended to bring out the party's case better and to enable court resolve all issues in controversy and the same should not be denied unreasonably or mechanically. The  
25 bottom line is that an amendment should only be denied where it will cause injustice to the opposite party.



Order 6 Rule 19 of the Civil Procedure Rules does not state the grounds to consider in exercise of its discretion whether to grant an application. The case law comes in handy. In **Gas Transport Services Limited v Martin Adala Obene SCCA 4 of 1994 [1994] VI KALR 5** it was held inter-alia: that the principles which govern the exercise of discretion in allowing amendments include:

1. *The amendment should not work injustice to the other side.*
2. *An injury that can be compensated for by way of costs is not treated as an injustice.*
3. *The multiplicity of proceedings should be avoided as far as possible and all amendments, which avoid such multiplicity, should be allowed.*
4. *An application which is made mala fide should not be granted.*
5. *No amendment should be allowed where it is expressly or impliedly prohibited by any law (Limitation of Action).*

The applicant in this case contends that the returns filed after execution raise facts which are relevant to the determination of all questions in controversy. The applicant averred that in the returns, the 3<sup>rd</sup> respondent confirmed that the 2<sup>nd</sup> Respondent was fully paid the decretal sum and the same was acknowledged. That despite receipt of the same, the Respondents went ahead to dispose of the Applicants' automobile truck Reg. No. UAY 199B. That these facts are relevant to court's determination of the controversy between the parties as to legality of disposing of the Applicants automobile.

I have considered the amended plaint and the affidavit in support of the application. The amendment does not alter the Applicants' cause of action but only seeks to plead facts concerning the 2<sup>nd</sup> Respondent being paid and after commencing execution for recovery of money which was fully paid. The question

in controversy in my view relate to the legality of the execution of the order of the Chief Magistrate, Her Worship Agwero Catherine in Kasese Civil Suit No. 11 of 2018 in relation to the sale of the Applicants' automobile by the Respondents. I find that the additional facts pleaded by the Applicants will aid court in making a proper and sober examination as to whether the decretal sum was paid before execution or the execution was meant to recover the sum awarded in the decree. Further, the Respondents did not oppose this application. The case is still at its early stages since no witnesses have testified. The applicants only seek to plead additional facts which will enable court resolve all questions in controversy once and for all. The amendment is not made malafide and is not prohibited by any law in my view. I find that no injustice will be caused to the Respondents by the proposed amendment. I therefore grant this application with orders:

- (a) That the applicants shall file an amended plaint and serve it upon the Respondents within 15 days from the date of this ruling.
- (b) The Respondents should file an amended Written Statement of Defense if any within 15 days after receipt of the amended plaint.
- (c) That costs of taking out this application shall abide the outcome of the main suit.

I so order.

  
Vincent Wagona

High Court Judge  
FORT-PORTAL

31.10.2022