

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MPIGI
Miscellaneous Application No. 006 of 2022
(Arising out of Civil Suit No. 05 of 2019)

5 1. ST. LAWRENCE CITIZENS' HIGH SCHOOL LIMITED
 2. MARIA JUSTINE TULINA NAKITENDE (Administrator
 Of the Estate of the late Mukiibi Lawrence Ssemakula) }APPLICANTS

VERSUS

 1. REYNOLDS CONSTRUCTION COMPANY LIMITED }RESPONDENTS
10 2. BWIRE MOSES

BEFORE: HIS LORDSHIP HON. JUSTICE OYUKO ANTHONY OJOK, JUDGE

Ruling

15 The applicants brought this application by way of Chamber summons under
Order 6 Rule 19, Order 52 Rules 1, 2, and 3 of the Civil Procedure Rules and
Section 98 of the Civil Procedure Act against the respondents.

 The applicants seek to be heard on orders that;

- 20 a. The applicants be granted leave to amend pleadings in Civil Suit No. 05 of
 2019 by increasing the claim from UGX 362,586,330/= (Uganda
 Shillings three hundred sixty two million five hundred eighty six thousand
 three hundred thirty only) to UGX 390,720,650/= (Uganda shillings three
 hundred ninety six million seven hundred twenty nine thousand six
 hundred fifty only).
- b. Costs of this application be provided for.

25 The application was supported by an affidavit sworn by the 2nd applicant and the
 grounds briefly are as follows;

1. That the applicants filed Civil Suit No. 05 of 2019 in this court against the
 respondents wherein the claim was for recovery of UGX 362,586,330/=

- (Uganda Shillings three hundred sixty two million five hundred eighty six thousand three hundred thirty only), special damages, general damages, punitive damages and exemplary damages, interest and costs of this suit for negligence, reckless driving by the first defendant's employee/agent causing irreparable damages to the first plaintiff's motor vehicle and severe injuries plus loss of business to the late Mukiiibi Lawrence Ssemakula.
2. The second Applicant sued in her capacity as Administrator of the Estate of the late Lawrence Mukiiibi Ssemakula.
 3. The applicant was not in custody of all the necessary documentary evidence in the main suit.
 4. That as the applicants' witnesses were directed to file evidence in the form of witness statements, they recovered more receipts to show necessary additional expenditures incurred as a result of the applicants' claim.
 5. That the applicants wish to make a further claim against the respondents and the same can only be done by amending their pleadings to capture the figures in the additional receipts.
 6. That the pleadings can only be amended with the leave of this honourable court.
 7. That it is just and fair that this application is allowed and the applicants/plaintiffs are granted unconditional leave to amend the pleadings by changing the value of their claim from UGX 362,586,330/= (Uganda Shillings three hundred sixty two million five hundred eighty six thousand three hundred thirty only) to UGX 390,720,650/= (Uganda shillings three hundred ninety six million seven hundred twenty nine thousand six hundred fifty only).
 8. It is equitable and in the interest of justice that the application be allowed.
 9. That the grant of leave to amend shall not cause any injustice to the respondents.

The application was opposed by an affidavit in reply sworn by Brilliant Atuhairwe contending that the application was misconceived, frivolous and vexatious.

Representation:

Mr. Abu Mayanja represented the applicants while Mr. Enock Ovumbi represented the 1st respondent. The 2nd respondent was unrepresented nor was he present in court during the hearing of the application. Both counsel filed written submissions.

Resolution of the application:

It was submitted for the applicants that the time the 1st applicant instituted a claim of UGX 362,586,330/= (Uganda Shillings three hundred sixty two million five hundred eighty six thousand three hundred thirty only) as against the respondents some receipts had not been brought to her attention by her brother Bernard Ssemakula who was directly in touch with the late Mukiibi Ssemakula while he was sick. That the said receipts have a total of UGX 34, 143, 360/= (Uganda Shillings thirty four million one hundred forty three thousand three hundred sixty only) which amount is substantial enough to be included in the 5
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In regard to whether the applicants can be granted leave to amend their pleadings, counsel for the applicants cited **Order 6 Rule 19** of the Civil Procedure Rules which provides for amendment of pleadings and gives court powers to grant leave to amend pleadings and the cases of **Gas Transport Services (Bus) Ltd v. Obene [1990 – 1994] EA 88** and **Sarope Petroleum Ltd v. Orient Bank Ltd & 2 Others, Miscellaneous Application No. 72 of 2011** to support his argument.

Counsel for the applicants added that the said receipts form part of the special damages which need to be pleaded and proved specifically. And that if this application is granted it will prevent the multiplicity of suits. That the application is not malafide since it was brought by the 2nd Applicant as an Administrator of the estate of the late Mukiibi Ssemakula and director of the 1st applicant. That the said receipts were in the custody of her brother because she never made any payments; which receipts had been misplaced.

Further, that the application is not limited by law and was brought without any delay and if granted will not prejudice the respondents. **(See: Lubowa Gyaviira & Others v. Makerere University, HCMA No. 471 of 2009).**

Counsel concluded that this court has inherent powers to make such orders as may be necessary for ends of justice, therefore, this application should be granted so that the main suit is properly determined.

Counsel for the 1st respondent on the other submitted that the application was an afterthought and was brought with undue delay. Counsel contested the claims in paragraph 7(a), (e) (f) of the affidavit in support of the application. That the monies claimed here under were incurred by persons who are not party to the suit and this is prejudicial to the 1st respondent.

Analysis of court:

I have carefully considered the submissions for the applicants in the instant application and the gist of this application is that the 2nd applicant seeks to increase the claim in the plaint from UGX 362,586,330/= (Uganda Shillings
5 three hundred sixty two million five hundred eighty six thousand three hundred thirty only) to UGX 390,720,650/= (Uganda shillings three hundred ninety six million seven hundred twenty nine thousand six hundred fifty only).

The 2nd applicant seeks to add a number of receipts that had been misplaced that cover a tune of UGX 34, 143, 360/= (Uganda Shillings thirty four million one
10 hundred forty three thousand three hundred sixty only) which is a substantial amount that ought to be added to the claim in the plaint. That adding this amount would prevent instituting another suit claiming for the same thus preventing multiplicity of suits.

In regard to the contestation of the 1st respondent on the claims in paragraph
15 7(a), (e) (f) of the affidavit in support of the application; monies claimed to have incurred by persons who are not party to the suit. Counsel for the applicants orally submitted in reply that these were monies incurred by the persons who escorted and took care of the sick person the late Mukiibi Lawrence who could not travel on his own. So all the expenditure under paragraph 7(a), (e) (f) was
20 towards the treatment and care of the late Lawrence Mukiibi.

It is trite that special damages are to be pleaded and proved specifically; therefore, the applicants cannot be able to prove or claim what they did not plead in their plaint as parties are also bound by their pleadings.

Order 6 Rule 19 of the Civil Procedure Rules provides for amendment of
25 pleadings and gives court powers to grant leave to amend pleadings.

I find and hold that increasing the claim in the plaint from UGX 362,586,330/= (Uganda Shillings three hundred sixty two million five hundred eighty six thousand three hundred thirty only) to UGX 390,720,650/= (Uganda shillings three hundred ninety six million seven hundred twenty nine thousand six
30 hundred fifty only) will not be prejudicial to the respondents in anyway.

Having the proper/correct claim in the plaint will aid this court in properly/efficiently determining the applicants' claim against the respondents. It will also save this court's time and the application was brought without undue delay.



This application is hereby allowed. Costs in the cause. I so order.
Right of appeal explained.



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5 **OYUKO ANTHONY OJOK**

JUDGE

30/03/2022