

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT FORT PORTAL**  
**MISC. APPLICATION NO. 063 OF 2023**  
**(ARISING FROM HCT – 01 – CV – CS NO. 046 OF 2020)**

5 **KAYONDO JAMES & 24 OTHERS ::::::::::::::::::::::::::::::: APPLICANTS**

**VERSUS**

**NATIONAL FORESTRY AUTHORITY ::::::::::::::::::::::::::::::: RESPONDENT**

**BEFORE: HON. JUSTICE VICENT WAGONA**

**RULING**

10 The applicant commenced this application under Section 98 of the Civil Procedure Act, Order 6 rule 19 and Order 52 rule 1 of the Civil Procedure Rules for orders that:

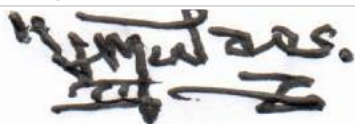
1. *The Applicant be granted leave to amend the plaint in Civil Suit No. 046 of 2020 to provide for important particulars, evidence and add new parties namely, Mwesige Dennis, Kaahwa Christopher, Guma Richard*  
15 *Muhidi, Kyomuhendo Robert and Baguma Julius.*

2. *That the costs of taking out the application be provided for.*

The application was supported by the affidavit of Mr. Kayondo James one of the applicants who averred that:

1. Since the institution of the main suit, some facts, claims and attachments  
20 which are material to the suit to wit; some parties namely Mwesige Dennis, Kaahwa Christopher, GumaRichardMuhindi, Kyomuhendo Robert and Baguma Julius were not included.

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2. That further the applicant's lawyer included facts and particulars which were a mistake. That some of the plaintiffs were settled on the suit land while others bought on part of the suit land from those indicated in the plaintiff.
- 5 3. That the current plaintiff omitted some facts and does not provide better and further particulars to the prayers sought to wit; the discovery of new evidence, and applications and grants for freehold and leasehold offers and preliminary surveys
- 10 4. That the omissions of those facts that are vital to the case is detrimental to the applicant/plaintiff's case. That it is in the interest of justice to have the plaintiff amended to include the facts omitted thus the application should be granted.

When the application came up for hearing, learned counsel for the Respondent, Jackline Namuddu asked for time to file a reply and she was given up to 2<sup>nd</sup> October 15 2023 and the case was fixed for mention on the same date. The Respondent's counsel has to date failed to file the Respondent's affidavit in reply. I will thus proceed to determine this application ex-parte.

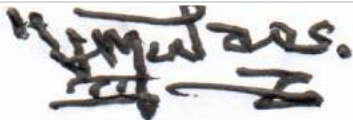
### **Issues:**

The issues at the heart of this application in my view are:

- 20 **1. Whether the applicants should be granted leave to amend the plaintiff.**
- 2. Remedies available.**

### **Representation and Hearing:**

The applicants were represented by M/s Rwabwogo & Co. Advocates. Learned counsel addressed me by way of written submissions which I have considered.



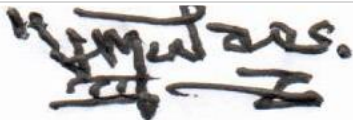
**Resolution:**

Amendment of pleading is governed by Order 6 Rule 19 of the Civil Procedure Rules which states thus:

5           “*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 as may be necessary for the purpose of determining the real questions in controversy between the parties*”

10           Amendments are paged on the need for courts to determine the real questions in controversy between the parties and to avoid multiplicity of pleadings. Where 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. (*See Cropper v Smith (1884) 26 Ch. D. 700 (CA)*).

15           The primary purpose of amendment is to give parties an opportunity to plead specific particular which will aid court in determining the controversy between them to a logical conclusion. The main intention is to ensure that those other facts which a party did not plead but are relevant to the issue under adjudication by court are pleaded so that all issues in controversy are fully investigated to minimize  
20           multiplicity of proceedings on issues which would be handled in one suit without parties filing different suits. (*See Muhindo v Kasese District Local Government and 2 Others (Miscellaneous Application 31 of 2023) [2023] UGHCLD 281 (30 June 2023)*).



The grounds upon which a court may exercise its discretion to grant leave or not were ably laid down by the supreme court in *Gasu Transport Services Limited v Martin Adala Obene SCCA 4 OF 1994 [1994] VI KALR 5* and were re-echoed by the Hon. Justice Boniface Wamala in *Okello Wilbert Vs. Obel Ronald, High Court Misc. Application No. 097 of 2020*, to include:

(a) *Amendments are allowed by the courts so that the real question in controversy between the parties is determined and justice is administered without undue regard to technicalities.*

(b) *Amendment should not work an injustice to the others side. An injury that can be compensated by an award of damages is not treated as an injustice.*

(c) *Multiplicity of pleadings should be avoided as far as possible and all amendments which avoid such multiplicity should be allowed.*

(d) *An application that is made malafide should not be granted.*

(e) *No amendment should be allowed where it is expressly or impliedly prohibited by law.*

(f) *The court shall not exercise its discretion to allow an amendment which has the effect of substituting one distinct cause of action for another.*

Order 1 rule 10 (2) of the CPR provides that: *The court may at any stage of the proceedings either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually*

**and completely to adjudicate upon and settle all questions involved in the suit, be added.**

The said order was considered by *Kanyehamba JSC in Departed Asians Property Custodian Baord vs Jaffer Brothers Ltd, SCCA No. 9 of 1998* where he observed thus: ***“This rule is similar to the English R.S.C Order 16 r 11 under which the case of Amon v Raphael Truck & Sons (1956) 1 ALLER P. 273 was considered and decided and in which it was said that a party may be joined in a suit, not because there is a cause of action against it, but because that party’s presence is necessary in order to enable the court effectually and completely adjudicated upon and settle all the questions involved in the cause or matter.”***

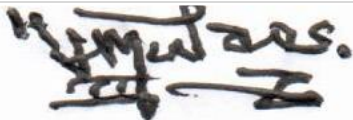
Order 1 rule 1 of the Civil Procedure Rules further provides that: ***“All persons may be joined in one suit as plaintiffs in whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist, whether jointly, severally or in the alternative, where, if those persons brought separate suits, any common question of law or fact would arise.”***

Learned counsel for the applicant contended that upon perusal of the plaint filed in civil suit no. 46 of 2020, it was discovered that some parties who had similar interests like those of the plaintiff were omitted. That there is also new evidence discovered in due course to wit, that some of the applicants realized that some of the persons who were not included in the plaint had sold them part of the suit land while others were still tenants/settlers on part of the suit land owned by the intended plaintiffs. He also argued that some claims/particulars, attachments/evidence were not captured thus there is need to amend the entire plaint.

I have considered the application and the annexure thereto and the plaint in Civil Suit No. 046 of 2020. The applicants in this suit filed a representative suit against the defendant seeking a declaration that they are bona-fide occupants on land comprised in Bwasese FRV, Block 194, Plot 1 at Kasunga; a declaration that the defendant was a trespasser; an order of special and general damages among other reliefs. They claimed the area in issue falls under Matiri Central Forest Reserve which was created in 1962. That in 2005 and 2009, disputes arose over the boundaries of the reserve and on 25<sup>th</sup> July 2014, the plaintiffs were evicted from the suit land through an order of court. That there was destruction of their properties to which they sought to recover special damages.

In the affidavit in support of the application, the applicants claim that some of those who were affected by the eviction and from whom some applicants derive title were not included in the plaint. That the plaint also omitted to plead material and particular facts and bring to light evidence which is essential to determination of the suit.

Since the intended plaintiffs are part of those who were allegedly evicted from the forest reserve and from whom other plaintiffs claim interest, it is better they are joined as plaintiffs to avoid multiplicity of proceedings. Further the applicants also claim there are material facts which they need to plead that will aid court in reaching at a fair decision. Since the case is still at its initial stages, I find it prudent and in the interests of justice to allow the plaintiffs amend the plaint and plead in a manner that will enable court reach a fair decision. Further, the amendment is not barred by any statute, it is not made mala-fide and a grant of the same will enable court resolve all questions in controversy between the parties to abate multiplicity of proceedings. This application therefore succeeds with the following orders;

A handwritten signature in black ink, appearing to be 'S. M. M.', is written over a horizontal line.

1. Leave is granted to the plaintiffs to amend their complaint and include all Mwesige Dennis, Kaahwa Christopher, Guma Richard Muhidi, Kyomuhendo Robert and Baguma Julius as applicants and this order should serve upon them.
- 5 2. That the amendment shall be restricted to the original cause of action against the defendant.
3. The applicants shall have the amended complaint filed and served within 5 days from the date of this ruling.
4. The defendant shall file an amended Written Statement of Defense if any  
10 within 7 days after service.
5. Each party shall bear own costs.

I so order.



Vincent Wagona

15 **High Court Judge**

**FORTPORTAL**

**DATE: 13/10/2023**

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