

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT FORT PORTAL**  
**MISC. APPLICATION NO. 045 OF 2023**  
**(ARISING FROM CIVIL SUIT NO. 08 OF 2023)**

5 **RWOBUSHANA KODEMU ::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::: APPLICANT**  
**VERSUS**  
**MAC EAST AFRICA LIMITED ::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::: RESPONDENT**  
**BEFORE: HON. JUSTICE VINCENT WAGONA**  
**RULING**

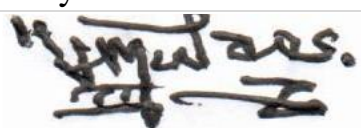
10 The applicant brought this application under section 98 of the Civil Procedure Act  
Cap. 71 and Order 1 rule 3 & 10 rule 2 and Order 52 rule 1, 2 & of the Civil  
Procedure Rules for orders that:

1. **Unconditional leave be granted to the Applicant/plaintiff to amend his pleadings and join Byamugisha Charles as co-defendant in Civil Suit No. 008 of 2023.**
2. **That leave is granted to the applicant to amend the plaint and have it served upon him.**
3. **That the costs of taking out the application be provided for.**

20 The Application was supported by the affidavit of Mr. Rwobushana Kodemu, the  
Applicant who averred thus:

1. That on the 16<sup>th</sup> day of December 2019, while he was coming from Rwimi heading to Nabingola in Mubende District, he boarded a bus registration No. UBB 416B that was destined for Kampala. That he paid a sum of shs 20,000 being the fare demanded by the bus conductor and he embarked on the journey.

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2. That when they left Fort Portal heading to Kampala, the defendant's driver started over-speeding and before the driver could negotiate the corner after Kyamara Primary School, the bus overturned due to over speeding and reckless driving. That as a result, the applicant lost his right arm and was rushed to Buhinga Referral hospital. That later his hand was amputated and he thus instituted Civil Suit No. 8 of 2023 against the respondent.

3. That in their written statement of defense the Respondent indicated that they had sold the said bus to Mr. Byamugisha Charles. That as such it is necessary to add Mr. Byamugisha Charles as a party for court to effectively adjudicate the claim by the applicant

***Representation and Hearing:***

M/s Kesiime & Co. Advocates represented the Applicant. The applicant addressed me by way of written submissions which I have considered.

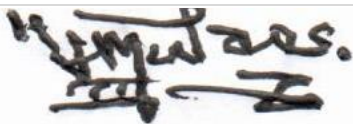
***Issues:***

I find the following as issues at the heart of this application thus:

- 1. Whether the applicant should be granted leave to amend the plaint and add Mr. Byamugisha Charles as a defendant to Civil Suit No. 8 of 2023.**
- 2. Remedies available to the parties.**

***Resolution:***

***Whether the applicant should be granted leave to amend the plaint and add Mr. Byamugisha Charles as a defendant to civil suit no. 8 of 2023.***



Order 6 Rule 19 of the Civil Procedure Rules governs the amendment of pleading and it states thus:

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

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  
10 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 particulars which will aid court in determining the controversy between them to the 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)*).

25 The grounds upon which 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*

*AdalaObene 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:

5 (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.*

10 (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.*

15 (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) provides that:

20 *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*

25 *involved in the suit, be added.*

The said order was considered by *Kanyeihamba 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.”*

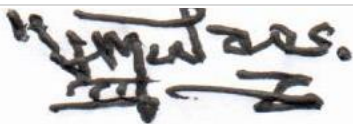
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Learned counsel for the applicant contended that there is need to add Mr. Byamugisha Charles as a defendant since the Respondent claims to have sold the vehicle to him. That the addition of Mr. Byamugisha Charles shall help court to resolve the controversies between the parties.

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I have considered the notice of motion, the supporting affidavit and the submissions of learned counsel for the appellant and pleadings in Civil Suit No. 8 of 2023. The Respondent in his written statement of the defense indicated that by a credit and purchase agreement dated 23<sup>rd</sup> August 2017, the defendant sold to Mr. Byamugisha Motor Vehicle Reg. No. UBB 416B. The cited motor vehicle is the one alleged by the applicant to have gotten involved in an accident where the applicant sustained injuries that resultantly led to amputation of his right arm. I therefore believe that Mr. Byamugisha Charles is a necessary party in this suit.

25 This application therefore succeeds with the following orders;

A handwritten signature in black ink, appearing to read 'Byamugisha Charles', is written over a horizontal line.

1. That Mr. Byamugisha Charles is added as a defendant to civil suit no. 8 of 2022.

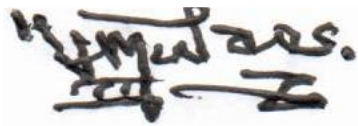
2. That the applicant shall amend the plaint to add the said Byamugisha Charles as a defendant and plead particulars of his claim against him.

5 3. That Mr. Byamugisha Charles shall after service file his Written Statements of Defense within 15 days from the date of service.

4. A reply to the written statement of defense if any shall be filed within 10 days from the date of service.

5. Each party shall bear their own costs

10 I so order.



Vincent Wagona

High Court Judge

FORTPORTAL

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DATE: 13/102023

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