

5

**IN THE HIGH COURT OF UGANDA AT KAMPALA  
(CIVIL DIVISION)  
MISCELLANEOUS APPLICATION NO. 381 OF 2021  
(ARISING FROM CIVIL SUIT NO. 498 OF 2019)**

**MUBIRU MOSES t/a GRAND AUCTIONEERS &**

10

**COURT BAILIFFS:.....APPLICANT/3<sup>RD</sup> DEFENDANT**

**VERSUS**

**1. AYEYO SILVANUS**

**2. AKUMU VICTORIA:.....RESPONDENTS/PLAINTIFFS**

**BEFORE: HON. JUSTICE ESTA NAMBAYO**

15

**RULING**

Mubiru Moses t/a Grand Auctioneers & Court Bailiffs (herein referred to as the Applicant) filed this application under **Section 33 of the Judicature Act, Cap. 13 and Order VI Rule 19 of the CPR SI.71-1**, seeking for orders that;

20

- 1. The Applicant be granted leave to amend his pleadings in Civil Suit No. 498 of 2019 to include the missing averment and contention that the Plaintiffs took all their property from him on the 27<sup>th</sup> day of November, 2020.**
- 2. Costs of the application be in the cause.**

25

The grounds of this application are set out in the affidavit in support of the application sworn by Mubiru Moses but briefly are: -

30

- 1. That at the time of filing the Written Statement of Defence, the Applicant was still in possession of the Respondents' property as per the inventory.**
- 2. That the Respondents picked all their properties from the Applicant on the 27<sup>th</sup> day of November, 2020.**

35 3. That the amendment will not occasion any injustice to the Respondent but will assist court to effectively determine the real question in controversy between the parties to their finality and accordingly appropriate orders.

That failure to add the said averment/ contention may prejudice the 3<sup>rd</sup> Defendant's written statement of Defence.

40 4. That it is in the interest of justice that this Application for leave to the Applicant to amend his pleadings in order to add the said averment/ contention to avoid miscarriage of justice in respect of the same matter be granted.

The Respondent filed an affidavit in reply opposing this application.

#### **Background to the suit.**

45 The brief background to this application is that the Respondents on the 25<sup>th</sup> November, 2019 instituted *Civil Suit No. 498 of 2019* against the Applicant & 4 Others for illegal eviction, breach of tenancy agreement, wrongful and or illegal attachment and execution of an order meant for distress and fraud as a result of forgeries, misrepresentation and concealment of information at the point of tenancy, breach of rights to privacy, education, shelter etc.

50 On the 10<sup>th</sup> December, 2019, the Applicant as the 3<sup>rd</sup> Defendant filed a Written Statement of Defence where he admitted in paragraph (l) that he was in possession of the plaintiffs' property as listed in the inventory but not as stated in the plaint and that the plaintiffs had never served him with any court order directing him to return their property after setting aside the execution.

55 On the 14<sup>th</sup> May, 2021, the Applicant filed *Misc. Application No. 381 of 2021* seeking for leave to amend to amend his pleadings in *Civil Suit No. 498 of 2019* to include the missing averment and contention that the Plaintiffs took all their property from him on the 27<sup>th</sup> day of November, 2020.

## Representation

60 The Applicant represented himself while Counsel Jordan Asodio represented the Respondent. The parties were instructed to file written submissions which they did, however, the Respondent informed court on the 26<sup>th</sup> May, 2022 that the Applicant had not filed submissions for over 1 year and this had prompted the Respondent to file his submission and sought the application to be dismissed. The Applicant prayed  
65 for two days to file his submissions which was granted.

In his submissions, Counsel for the Respondent raised the following issues for determination: -

1. Whether the Application is tenable in the circumstances of this case?
2. What remedies are available?

70 Issue 1:

### **Whether the Application is tenable in the circumstances of the case?**

In his submissions, Counsel for the Respondent relied on **Order 6 rule 7** of the **CPR** (as amended) as the law governing amendments of pleadings. He submitted that the Applicant is still bound by the Written Statement of Defence that he filed two (2)  
75 years ago. Counsel cited the case of **Talikuta –v- Nakendo 1979 HCB 276** where court noted that it is a statutory rule of pleadings that a party is bound by his or her pleadings. That courts however, have powers to allow amendments if they introduce no new facts. He explained that from the reading of the supporting affidavit deposed by the Applicant, Counsel saw no clear reason averred, to necessitate  
80 amendment of the Written Statement of Defence. He cited **Section 100** of the **CPA**, **Order 2 rule 19** of the **CPR** and referred to the cases of **Eastern Bakery –v- Castellina 1958 EA 462**, **Gaspo Transport –v- Adala Obene SCCA No. 4/1994** which are to the effect that courts can allow amendments provided it is necessary to enable determination of parties' rights in respect to matters in controversy and that  
85 Amendment will be allowed provided it is not late, it is intended to settle a matter in

dispute and it does not cause injustice to the other party. Counsel submitted that in this case, this application was brought late with the intention to cause delay of the prosecution and it is also brought in bad faith. That it is speculative for all intents and purposes considering that the Applicant was present when court was giving Directives and fixing the case for hearing. He prayed that the application be dismissed with costs.

In reply, the Applicant explained that when he filed his Written Statement of Defence on the 10<sup>th</sup> day of December, 2019, he admitted having the Respondents' properties. That the Applicant was subsequently directed by the Chief Registrar to surrender all the Respondents' property vide Claim No. CR/BDC/49/19 and on the 17<sup>th</sup> day of December, 2019, the 1<sup>st</sup> Respondent went to Kyebando - Kikaya where the Applicant was keeping the property and he selected only a few shirts and shoes with the aim of abandoning the rest of the property. On the 27<sup>th</sup> day of November, 2020 the Respondents picked the remaining property and acknowledged receipt thereof on the inventory which was witnessed by the lorry driver and care taker of the premises.

**Analysis:**

I have looked at the pleadings and the evidence on court record. I have also looked at Order 6 rule 19 of the Civil Procedure Rule which provides that;

*"the court may, at any stage of the proceedings, allow either party to alter or amend his or her pleadings in such 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."*

I note from the evidence on record that on the 27<sup>th</sup> /11/2020, the 1<sup>st</sup> Respondent/plaintiff received property from the Applicant/3<sup>rd</sup> Defendant, as per annexure 'A' to the Applicant's affidavit in rejoinder. This was after the Applicant/3<sup>rd</sup> Defendant had filed his WSD on the 10<sup>th</sup> December, 2019. Collection of property could affect the Applicant's WSD as it now alters the facts of the case. I have looked

115 at the intended amendment to the Applicant/3<sup>rd</sup> Defendant's WSD, I find that the  
intended amendment does not prejudice the Respondent's case in any way. If  
anything, it will help this court to determine the real questions in controversy  
between the parties and to help avoid a multiplicity of cases. Therefore, I find it  
proper to allow this application which I do hereby allow with orders that the  
Applicant files his amended WSD in 14 days from the date of this ruling. Costs stay  
120 in the cause.

I so order.

**Dated, signed and delivered by mail at Kampala this 15<sup>th</sup> day of March, 2023.**

**Esta Nambayo**

125 **JUDGE**

130