

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
FAMILY DIVISION
MISCELLANEOUS APPLICATION NO. 316 OF 2022
(ARISING FROM CIVIL SUIT NO. 91 OF 2008)

SARAH NYAKATO..... APPLICANT

VERSUS

- 1. LIN JENG LIANG aka LIN JEFF**
- 2. EDDY CHOU**
- 3. MUSTAFA N. KADALA**
- 4. ABBARCI PETROLEUM**
- 5. CENTENARY RURAL DEVELOPMENT BANK LTD**
- 6. COMMISSIONER LAND REGISTRATION..... RESPONDENTS**

BEFORE: HON LADY JUSTICE JEANNE RWAKAKOOKO

RULING

Introduction

This application was brought by way of chamber summons under section 98 & 100 of the Civil Procedure Act, section 33 of the Judicature Act and Order 6 Rule 19 and 31 of the Civil Procedure Rules for orders that; -

1. Leave be granted to the Applicant to amend the plaint to plead current status of the estate property and add parties
2. Costs of the application be in the cause.

The application was supported by an affidavit in support deposed by the Applicant herein - Sarah Nyakato.

Background

The Applicant filed Civil Suit No. 91 of 2008 in her capacity as the widow and beneficiary of the estate of the late Lee Sing Chiang who was the registered proprietor of Land comprised in LRV 281Folio 10 Plot 83 Block 244 at Kibuga.

The 1st and 2nd Respondents claimed to be friends of the late Sing Chiang and allegedly acquired letters of administration after making false averments after which they illegally processed a special certificate of title of the land mentioned above with the intention of alienating the same from the Applicant.



The Applicant then lodged several caveats on the land in a bid to protect her beneficial interest in the land however in June 2017 on carrying out a search, the Applicant found out that the 1st and 2nd Respondents had transferred the land to Mustafa N. Kadala (intended 3rd defendant) and the Commissioner Land Registration (6th intended defendant) had gone ahead to register the same.

The Applicant then filed Misc. Application No. 382 of 2017 for a temporary injunction against the 1st, 2nd and 3rd Respondents from any further dealing on the suit land. A ruling in favor of the Applicant was delivered however on making another search, the Applicant found out that the Respondents had taken out a mortgage with Centenary Rural Development Bank (intended 5th defendant)

The present application seeks to amend the plaint by adding Mustafa N Kadala, Abbarci Petroleum Marketing Company, Centenary Rural Development Bank and the Commissioner Land Registration as defendants in the main suit.

Representation

At the hearing, the Applicant was represented by Omongole Richard. The Applicant was present in court. Barbara Akullo appeared for the Respondents who were absent. Both parties duly filed written submissions as directed by court.

Issue for Determination

Whether the Applicant should be granted leave to amend the plaint vide Civil Suit No. 91 of 2008.

Resolution

The Court has wide and extensive powers to allow the amendment of pleadings. These powers are designed to prevent the failure of justice due to procedural errors, mistakes and defects. Thus the object of amendment of pleadings is to enable the parties to alter their pleadings so as to determine the true substantive merits of the case, having regard to substance rather than form.

Article 126(2)(e) of the Constitution of the Republic of Uganda 1995 (As amended) provides that in adjudicating cases of both a civil and criminal nature, courts shall, subject to the law administer substantive justice without undue regard to technicalities.

Thus, under **section 100 of the Civil Procedure Act Cap. 71** it provides for the general power to amend;

"The court may at any time, and on such terms as to costs or otherwise as it may think fit, amend any defect or error in any proceeding in a suit; and all necessary amendments shall be made for the purpose of determining the real question or issue raised by or depending on such proceeding."



The Supreme Court in ***Gasco Transport Services Limited v Martin Adala Obene scca 4 OF 1994 [1994] VI KALR 5*** laid down the following principles which govern the exercise of discretion in allowing amendments:

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

Accordingly, amendments may be allowed before trial, at trial, or even after judgment as long as allowing the amendment shall not prejudice the other party or as long as the other party can be compensated by costs. Having said that the later the amendment is applied for, the less likely it is that it will be readily given by the Court. Thus, the more advanced the proceedings are and the more changes brought on by the proposed amendment, the greater the burden is upon the Applicant who seeks leave to amend to prove to Court that leave ought to be granted.

Counsel for the Applicant relied on Order 6 Rule 19 of the Civil Procedure Rules which provides that court may allow either party to alter or amend his or her pleadings. I agree with the submissions of counsel. Amendment of pleadings can be at any other time if the purpose is to determine the real question of controversy between the parties.

In the present case, the Applicant seeks leave to amend the plaint vide Civil Suit No. 91 of 2008 on the premise that the transfer of the suit land from the 1st and 2nd Respondents to the 3rd Respondent and then subsequently to the 4th Respondent was done fraudulently despite the fact that she had lodged caveats on the same. It is the Applicant's contention that the registration by the 6th Respondent of the 3rd and 4th Respondents was also done illegally.

The Applicant also contended that in total disregard of the temporary injunction issued vide Misc. Application No. 382 of 2017, the Respondents went ahead to take out a mortgage with the 5th Respondent. In support of the application, the Applicant attached the certificate of title for the suit land marked 'D1-D8', the statement of search marked 'H', the caveat marked 'G' and the ruling granting the temporary injunction marked 'J'

In response to this, the 1st and 2nd Respondents argued that they dealt with the suit land as administrators of the estate of the late Lee Sing Chang and the same had been disposed off in August 2014. That by the time the Applicant filed the application for the temporary injunction, the property had already been sold off three years prior. The 1st and 2nd Respondents averred that they had lost propriety interest in the land by the time the suit land was mortgaged to the 5th Respondent.



The Respondents averred that hearing of the main suit was in its advanced stages and amending of the same would be prejudicial to the Respondents, would change the nature of the entire suit and would introduce new causes of action. The 1st and 2nd Respondents also contended that the Applicant seeking to amend the plaint 14 years after the suit was filed was done in bad faith.

As was held in **Gaspo Transport V Martin Adala (supra)**, multiplicity of pleadings should be avoided. The Applicant attached her proposed amended plaint to this application.

With regards to the 1st and 2nd Respondents who are the 1st and 2nd defendants in the main suit, the proposed amended plaint introduces particulars of fraud against the 1st and 2nd defendants in regards to the process of them acquiring letters of administration of the estate of the late Lee Sing Chiang. Particulars of fraud are also pleaded against the 3rd, 4th 5th and 5th Respondents. The purpose of the amendment herein is to ensure that all claims of the Applicant against all the Respondents are determined by the court as long as they arise from the same transaction and are related to the same estate.

This court has noted the 1st and 2nd Respondents concerns regarding the amendment being prejudicial. The contention that the amendment is being made after 14 years after the suit was filed is unsubstantial because **Order 6 Rule 19 of the CPR (supra)** doesn't provide a time limit within to which to make an amendment. Additionally, I am convinced that the prejudice alleged can be compensated in damages because disallowing the amendment would occasion an injustice.

Counsel for the 1st and 2nd Respondents while relying on the case of **Gaspo transport (supra)** argued that the amended plaint sought to introduce new aspects of a cause of action based on illegality and fraud while the first plaint did not. Evidently, the Applicant's amended plaint introduced allegations of fraud that cannot be ignored by this court. As was held in the case of **Makula International V His Eminence Cardinal Emmanuel Nsubuga (1982) HCB 11**, *a court of law cannot sanction what is illegal and an illegality once brought to the attention of the court overrides all questions of pleading, including any admission.*

Notwithstanding the above, I do not agree that a new cause of action was introduced. From perusal of the two plaints it is clear that the amended plaint specifically pleads fraud which was not done in the first plaint. The same cause of action premised on the fact that the 1st and 2nd Respondents acquired letters of administration through concealment still stands.

It should be noted that there should be an end to litigation and as provided for in **section 100 of the CPA (supra)** that amendments are allowed to enable determination of the real issues. To ensure that there is no multiplicity of proceedings and a multiplicity of suits regarding the same estate, it is only prudent that this amendment is granted by court.

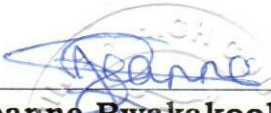
In light of the above, I see that to resolve the issues in controversy between the parties and also to prevent the potential multiplicity of proceedings the Applicant should be granted leave to amend the plaint vide Civil Suit No. 91 of 2008.

Orders

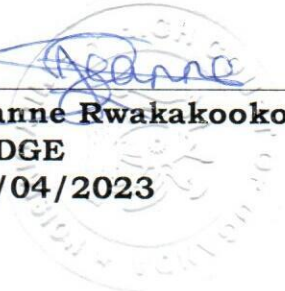
In these premises, the Applicant's application succeeds and I hereby order as follows;

1. The Applicant is hereby granted leave to amend the Plaint vide Civil Suit No. 91 of 2008 by adding Mustafa N. Kadala, Abbarci Petroleum Marketing Co. Limited, Centenary Rural Development Bank Ltd and the Commissioner Land Registration as the 3rd, 4th, 5th and 6th Defendants respectively.
2. The Applicant is hereby granted leave to make any other necessary amendments in the plaint vide Civil Suit No. 91 of 2008.
3. The Applicant should file and serve the amended plaint on all the defendants within fifteen (15) days from date of receipt of this ruling.
4. Costs of this application be in the cause.

It is so ordered.



Jeanne Rwakakooko
JUDGE
25/04/2023



Ruling delivered on this 8th day of MAY, 2023