

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MBARARA
HCT-05-CV-MA-0178-2022**

(Arising from HCT-05-CV-CS-0043-2019)

**FRED KANANURA :::::::::::::::::::::::::::::::::::::: APPLICANT
VERSUS**

- 1. GEORGE TIBEMANYA**
- 2. ARUHO DAVID WYCLIFFE**
- 3. WAREEBA STANLEY :::::::::::::::::::::::::::::::::::::: RESPONDENTS**

BEFORE: HON LADY JUSTICE JOYCE KAVUMA

RULING

Introduction

[1] This was an application for leave to amend the plaint in **HCT-05-CV-CS-0048-2019** to plead additional material facts and grounds for revocation of the letters of administration for the estate of the late Lazio Tibesasa and costs.

The application was brought by chamber summons under **Order 6 rule 19 and 31 of the Civil Procedure Rules as amended, Section 33 of the Judicature Act, Cap. 13, Section 98 of the Civil Procedure Act and Article 126 (2) (e) of the Constitution.**

Background.

[2] The gist of the instant application as can be ascertained from the pleadings is that when **HCT-05-CV-CS-0048-2019** was reinstated by this court having been dismissed, the Applicant’s new advocates established

material facts and grounds for revocation of letters of administration which were not pleaded by the Applicant's former advocates.

According to the Applicant, these facts related to failure of the Respondents to file a true and full inventory of the property for which they were granted letters of administration by this court.

[3] The application was opposed by affidavits deposed to by all Respondents. The three affidavits filed by the Respondents contain similar depositions. The Respondents state that the instant application was baseless as the alleged inventory was already on the court record. The parties also depose that the initial plaint that the Applicant seeks to amend does not disclose a cause of action.

In his affidavit in rejoinder, the Applicant delved so much into the merits of **HCT-05-CV-CS-0048-2019** which in my view is not the substance of the instant application. Be that as it may, the Applicant vehemently points out that the alleged inventory as filed by the Respondent was not a true and final inventory of the distribution of the Estate of the late Lazaro Tibesasa as alleged.

Representation.

[4] The Applicant was represented by M/s Ojambo & Ojambo Advocates while the Respondents were represented by M/s Anthony Ahimbisibwe Advocates. Both Counsel filed submissions in the matter which I have considered.

Analysis and decision.

[5] It is trite that amendments are usually allowed unless they will substantially change the cause of action or deprive the opposite party of a defence, such as, limitation. Amendments are court's way of making sure that the real questions or issues raised by the parties are conclusively handled and settled. (See for example Section 100 of the Civil Procedure Act)

Order 6 rule 19 of the Civil Procedure Rules provides that:

“The 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.”

The principles governing exercise of discretion in allowing amendments have been restated in various authorities both locally and internationally. (See Habib Jaffer Manji vs Singh [1962] EA 557, Gaso Transport Services (Bus) Ltd vs Martin Adala Obene SCCA 4 of 1994, Charlesworth vs Relay roads and Ors [1999] 4 ER 397 and more recently in Vidyabai and another vs Padamalatha and anor AIR 2009 SC 1433). The restatement has given rise to the following principles:

1. The court has jurisdiction to grant an application to amend the pleadings to raise new points and/or to call fresh evidence and/or to hear fresh arguments;
2. The court must clearly exercise its discretion in relation to such an application in a way best designed to achieve justice;

3. The general rules relating to amendment apply so that:

(a) While it is no doubt desirable in general that litigants should be permitted to take any reasonably arguable point, it should by no means be assumed that the court will accede to an application merely because the other party can, in financial terms, be compensated in costs;

(b) As with any other application for leave to amend, consideration must be given to anxieties and legitimate expectations of the other party, the efficient conduct of litigation, and the inconvenience caused to other litigants;

4. Each case will have particular and peculiar facts which court ought to take into account when deciding how to dispose of the application to amend. Simply put, every case should be decided on its own facts;

5. Applications for amendment should be made in good faith;

6. No amendment should be allowed where it is expressly or impliedly prohibited by any law.

7. Amendments sought before the hearing should be freely allowed, if they can be made without injustice to the other party.

In the English decision of Ketteman vs Hansel Properties [1987] AC 189 at 220A, it was held that;

“Whether an amendment should be granted is a matter for the discretion of the trial judge and he or she should be guided in the

exercise of the discretion by his or her assessment of where justice lies.”

In Cooper vs Smith (1884) 26 CHD 700, Bowen L.J while commenting on amendments, held as follows;

“I think it is a well-established principle that the object of courts is to decide the rights of the parties and not to punish them for mistakes they make in the conduct of their cases by deciding otherwise than in accordance with their rights...I know of no kind of error or mistake which, if not fraudulent or intended to overreach, the court ought to correct, if it can be done without injustice to the other party- courts do not exist for the sake of discipline but for the sake of deciding matters in controversy; and I don't regard such amendment as a matter of grace...it seems to me that as soon as 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, as anything else in the case is a matter of right.”[Emphasis mine]

I shall be guided by the above in resolution of this application.

[6] Counsel for the Applicant submitted that the instant application was not expressly and or impliedly barred by any law, was not brought malafide and the Applicant did not seek to change his cause of action but only to add facts and grounds for revocation of letters of administration. That the amendment was intended to ensure all matters

in controversy between the parties are determined and to avoid multiplicity of suits.

On the other hand, counsel for the Respondents submitted that the plaintiff that was sought to be amended did not disclose a cause of action. That this was so because the said plaintiff did not disclose any of the grounds under **Section 234** of the Succession Act to justify the revocation of the letters of administration.

[7] The material part of **Order 7 rule 11**, reads; “*The plaintiff shall be rejected in the following cases – (a) where it does not disclose a cause of action*”. The provisions of this rule are mandatory and a plaintiff which does not disclose a cause of action should be rejected and cannot be amended. A plaintiff may disclose a cause of action without containing all the facts constituting the cause of action provided that the violation by the defendant of a right of the plaintiff is shown. (See Sullivan vs Ali Mohamed [1959] EA 243 per Windham JA and Auto Garage Ltd vs Motokov (3) [1971] 1 EA 514).

As to whether the Applicant’s plaintiff in **HCT-05-CV-CS-0048-2019** discloses a cause of action, the plaintiff must show that the Applicant enjoyed a right, that the right had been violated and that the Respondents were liable. (See Auto Garage Ltd vs Motokov (3) (supra)). What is important to be revealed in the above consideration is the question as to what right has been violated.

I have critically examined the Applicant's first amended plaint in **HCT-05-CV-CS-0048-2019** dated 10th July 2019, it states in **paragraph 4** as follows;

“4. The Plaintiffs claim against the Defendants is for revocation of letters of administration, declaratory orders, general damages, a permanent injunction and costs of the suit from the Defendants”.

Under **paragraph 9** it states that:

“9. The Defendants applied for and obtained a grant of letters of administration with mala fide intention.

Particulars of malafide intention

a)Intentionally excluding some close members of the family of the late Rev. Lazaro Tibesesa from the process of application for the grant of letters of administration.

b)Forging signature of one of the beneficiaries of the estate of the estate of the late Rev. Lazaro Tibesasa purported to have participated in the family meeting and consenting to choice of the defendants as administrators of the estate of the late Rev. Lazaro Tibesasa”.

The plaint goes on to state in the next paragraphs specifically paragraphs 10, 11 and 12 as follows;

“10.The Plaintiffs’ concerns were registered with the office of the District Administrative Officer Bushenyi by the 3rd Plaintiff who initially halted the process but the same was secretly revitalized by the defendants until letters of administration were granted.

11.The Plaintiffs shall at the trial aver that the actions of the defendants/administrators of the estate of late Rev. Lazaro Tibesasa are tainted with malafide intentions, illegal, iniquitous, discriminatory and detrimental to the plaintiffs for which they shall seek for declaratory orders.

12.The Plaintiffs shall further argue that the actions of the defendants have caused inconvenience, anguish and psychological torture for which they seek for general damages and a permanent injunction against the 1st Defendant’s intention to share the estate of the late Rev. Lazaro Tibesasa to the exclusion of other beneficiaries”.

[8] It is my finding upon closely reading the above excerpts from the plaint that the Applicant’s plaint discloses a cause of action against the Respondents.

From the excerpts above, the plaint was in view able to show that the Applicant and other Plaintiffs were first and foremost beneficiaries of the estate of the late Rev. Lazaro Tibesasa, that the Respondents were administrators of the estate of the late Rev. Lazaro Tibesasa whose actions in relation to the estate affected them as beneficiaries.

[9] I now turn to the question whether the plaint in **HCT-05-CV-CS-0048-2019** can be amended. The Applicant's case was that owing to a mistake of their former advocates, material facts and grounds for revocation of the letters of administration were not pleaded. That these facts related to the fact that ever since this court granted letters of administration to the Respondents on **27th November 2018**, they have not made a true and full inventory of the estate property and have not administered the estate in accordance with the law.

The Respondents' opposition was that the inventory existed and the same was filed on **24th July 2019**. Counsel for the Respondent further submitted that the applicant was seeking to tactfully replace the prayers under paragraph 9 of the plaint with a totally new and distinct cause of action, namely failure to file a true and full inventory.

[10] It is now trite law as I have already pointed out that a proposed amendment which introduces a new cause of action which is inconsistent with the Applicant's earlier pleadings will be refused by the court. (See African Overseas Trading Co. [1963] E.A 468 and Patel vs Joshi (1952) 19 E.A.C.A 42).

It is also a good and desirable practice for an Applicant in such an application to file a proposed amended plaint showing the amendments in red ink but failure to do so is not fatal to the application. (See Hasham Meralli vs Javer Kassam & Sons Ltd [1957] EA 503 and Meru Farmers' Co-operative Union vs Abdu Aziz Suleman (No. 1) [1966] EA 436).

To the instant application the Applicant attached the proposed amended plaint showing the intended amendments.

Section 234 (1) of the Succession Act, Cap 162 provides that the grant of Letters of Administration may be revoked or annulled for just cause.

[11] “Just cause” as used in **Section 234(1)** of the Succession Act has been held to inter alia mean that the proceedings to obtain the grant were defective in substance. (See Nalumansi vs Kasande & 2 Ors (Supreme Court Civil Appeal No. 10 of 2015)).

According to the **Black's Law Dictionary 8th Edition at page 231** “just cause” is analogous to “sufficient cause” or “good cause” and that it relates to a legally sufficient reason. The grounds for just cause laid out under **Section 234(1)** of the Succession Act are merely examples of “just cause” and are not conclusive in nature. This Court has the power to revoke a grant, at its discretion, having regard to all the circumstances. (See Anecho vs Twalib & 2 Ors (Civil Suit 9 of 2008)).

Therefore, any facts upon which Court may judiciously invoke its discretion to revoke letters of administration are sufficient within the term “just cause”.

I have examined the amended plaint filed in **HCT-05-CV-CS-0048-2019** on **26th June 2019** and the proposed amendment, it is my finding that the Applicant does not intend to substitute one cause of action for another within the meaning of **Section 234(1)** of the Succession Act. The Applicant in view asking this court to allow him lay before it all the facts necessary to invoke this court's discretion to revoke the Letters of Administration that were granted to the Respondent.

This is a matter of right available to the Applicant as a litigant. No injustice will be occasioned against the Respondents should these facts be brought to the attention of this court.

The amendment if granted will go a long way in resolving the actual dispute between the parties.

In conclusion, this application for leave to amend is allowed. The costs of the application shall abide the outcome of the main cause.

I so order.

Dated, delivered and signed on this 31st August 2023.

**Joyce Kavuma
Judge.**