

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
AT KAMPALA
(LAND DIVISION)
MISC.APPLICATION NO.379 OF 2013
(ARISING OUT OF CIVIL SUIT NO.201 OF 2012)**

SAMALIE KATUMBA

:~::~:~::~:~::~:~::~:~::~:

APPLICANT

VERSUS

- 1. STANBIC BANK**
- 2. ANTHONY MUPERE**
- 3. PRINT INNOVATIONS**
- AND PUBLISHERS LTD**
- 4. GODFREY KATUMBA**

:~::~:~::~:~::~:~::~:~::~:

RESPONDENTS

RULING BY HON. MR. JUSTICE JOSEPH MURANGIRA

The applicant through her lawyers Mbazira & Co. Advocates brought this application by chamber summons supported by an affidavit by the applicant under Order 6 rule 19 of the Civil Procedure Rules and Sections 98 and 100 of the Civil Procedure Act, Cap. 71, against the four (4) respondents jointly or/ and severally.

The 2nd, 3rd and 4th respondents did not file any affidavits in reply to this application. To that extent, the said respondents are not opposing this application. This application succeeds as against them.

The 1st respondent through its lawyers M/s Nangwala, Rezida & Co. Advocates filed an affidavit in reply to this application that was sworn by

Mpiima Jamir Ssenoga, the legal manager in the 1st respondent. The 1st respondent vehemently opposed this application in its affidavit reply. However, the applicant filed in Court an affidavit in rejoinder and reply to the 1st respondent's affidavit in reply. That the averments in the affidavit in reply were answered by the applicant in her affidavit in rejoinder.

This application is seeking the following orders; that:-

- (a) leave from this honorable Court to amend her pleadings to add land comprised in Block 212 plot 300, land at Kyebando, Kampala, for purposes of extending the protection of rights of the applicant and to restrain the respondents jointly or severally, their agents, representatives/workermen from selling, evicting, harassing, intimidating, or in any other way interrupting the applicant's use and enjoyment of land comprised in Block 212 plot 300, land at Kyebando, Kampala.**
- (b) Provision be made for costs of this application.**

In his submissions counsel for the applicant submitted that this application is properly before this Court. And that, this application has merit and hence that the same be allowed with costs.

Counsel for the 1st respondent does not agree with the submissions by Counsel for the applicant. He submitted that the 3rd respondent applied for and was offered a lease facility which it accepted. That the 4th respondent herein, mortgaged property comprised in **Block 212 Plot 299** to the 1st respondent as security for the lease facility granted to the 3rd respondent.

The 3rd respondent consequently failed to meet its obligations under the lease which prompted the Bank to realize its security.

The applicant herein instituted **Civil Suit No. 201 of 2012** and consequently **Misc. Application No. 412 of 2012** where an injunction was applied for and granted.

The applicant subsequently instituted **Misc. App. No. 319 of 2013** wherein she seeks leave to amend other pleadings by adding **Kyadondo, Block 212 Plot 300.**

The law on amendments of pleadings is settled:-

The learned Justices of the Court of Appeal of East Africa in **Eastern Bakery vs. Castalino [1958]1 EA 46** laid down the grounds upon which amendments to pleadings should be premised. The introduction of a new Cause of action by changing the subject matter of the suit was stated as an absolute bar to an application for amendment of pleadings.

The above position was fortified by the learned authors **Chiterly and Rao in their Commentary on the Indian civil procedure Code which is in paramateria to our civil procedure Rules at page 2218**, where they stated that,..... “ as a general rule, the Court will not in the exercise of its discretion allow an amendment converting a suit of one character into a suit of another character”..... they further stated that “court cannot by way of amendment sanction the altering or substitution of one distinct cause of action for another or change of the subject matter of the suit.....”

The objective of this application is to enable the applicant amend her pleadings, so as to ensure that the litigation between the parties is conducted, not on the false hypothesis of the facts already pleaded or the relief or remedy already claimed, but rather on the basis of the true state of facts or the true remedy which the parties really and finally intend to rely on or to claim.

It is the argument by Counsel for the applicant that the applicant seeks for leave from this Court to amend her pleadings to add land comprised in **Block 212 plot 300, land at Kyebando, Kampala**, for purposes of extending the protection of rights of the applicant and to restrain the respondents jointly or severally, their agents, representatives/workermen from selling, evicting, harrassing, intimidating, or in any other way interrupting the applicant's use and enjoyment of land comprised in **Block 212 plot 300, land at Kyebando, Kampala** and for provision to be made for costs of this application.

It is further argued by Counsel for the applicant that the applicant having sought the protection of this Court to stop/restrain the respondents from selling the applicant's matrimonial home comprised in **Kyadondo Block 212 plot 299** by way of temporary injunction, the 1st respondent has now resorted to the applicant's family land comprised in **Kyadondo Block 212 plot 300** where the applicant grows food crops for her family sustainance.

It is the law that Court may at any stage of the proceedings allow either party to alter/amend his or her pleadings and all such amendments shall be done as may be necessary for the purpose of determining the real questions in controversy between the parties, per **Order VI Rule 19** of the **Civil Procedure Rules**. The learned Justice of the Supreme Court of Uganda (Tumwesigye JSC) concurred with this fore going exposition of the law at page 123 in **Mulwooza & Brothers Ltd vs N Shah & Co. Ltd, Civil appeal no. 26 of 2010:**

From the grounds of this application and the affidavit evidence adduced by the parties, there is a question in controversy among the parties which

necessitates the applicant to amend her pleadings to include **Block 212 plot 300, land at Kyebando Kampala**. It is therefore right to unite in the same suit several causes of action and this court should not discourage it even if it is to be done through an amendment to pleadings as per Tumwesigye JSC at page 122 in **Mulwooza & Brothers Ltd vs N Shah & Co. Ltd** (supra).

Furthermore, it is a cardinal principle in our judicial procedure that Courts must, as much as possible avoid multiplicity of suits, therefore, if a plaintiff applies for leave to amend his/her pleadings, Courts should in the interest of promoting justice freely allow him/her to do so. The Court can only refuse leave to amend where the amendment would change the action into one of substantially different character or where the amendment would prejudice the rights of the opposite party.

In the instant case, the amendment if granted would not in any way change the action into one of a substantially different character or prejudice the rights of the defendants in any way. This Court therefore ought to grant leave for amendment on the basis of the aforesaid and of course, following the decision in **Tororo Cement Industries Co. Ltd** vs **Frokina International Ltd SCC A NO.2 of 2001**, which is to the effect that a plaint which discloses a cause of action can be amended to include particulars.

Considering the constitutional provision of substantive justice being administered without undue regard to technicalities, the controversy among the parties cannot be solved if leave is not granted by this Court to

amend the pleadings. The test was laid out by Tumwesigye JSC in **Mulwooza and Brothers** (supra) at page 123 when he stated;

“Amendments are allowed by Courts so that the real question in controversy between the parties is determined and justice is administered without undue regard to technicalities in accordance with Article 126(2)(e) of the constitution”.

On this foregoing exposition of law among others, I am convinced that the applicant proved her case on the balance of probabilities. The applicant’s interests need to be protected pending the prosecution and determination of her case against the respondents in the main suit.

Conclusion

In conclusion I grant leave so that the applicant amends her pleadings to include **Block 212 plot 300, land at Kyebando, Kampala** to extend the protection of Court to the applicant’s family land in Plot 300 as accorded to the applicant’s matrimonial home in Plot 299.

In that regard, I am fortified by the words of Tumwesigye JSC in **Mulwooza and Brothers** (supra) at page 123 where he stated that;

“if a plaintiff (applicant in this case) applies for leave to amend his/her pleadings, Courts should in the interest of justice freely allow him/her to do so unless this would cause an injustice that cannot be compensated for by costs or...introduce a distinct cause of action”.

In the premises, and for the reasons given hereinabove in this ruling, this application has merit. It is accordingly allowed in the terms and orders being sought therein with costs in the cause.

Dated at Kampala this 18th day of June, 2013.

sgd
Murangira Joseph
Judge