

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**(LAND DIVISION)**  
**MISCELLANEOUS APPLICATION NO. 66 OF 2013**  
*(Arising Out Of Miscellaneous Application No. 687 of 2012*  
*( Arising out of Civil Suit No. 121 of 2011)*

**STEVEN KIGOZI MAKUBUYA ::: APPLICANT**

**VERSUS**

**BARCLAYS BANK OF UGANDA LIMITED::: RESPONDENT**

***BEFORE: HON. MR. JUSTICE BASHAIJA .K. ANDREW***

**R U L I N G:**

This application is brought under **Ss. 96 & 98 CPA; Order 51 r.6, O 52 rr. 1 & 2 CPR** seeking for orders that;

- (1) The time within which to file the amended plaint in the above stated Civil Suit No. 121 of 2011 be extended and/or leave be granted to file the amended plaint out of time.***
- (2) Costs of the application be provided for.***

The grounds of the application are;

- (i) That the Applicant is the Plaintiff in Civil Suit No.121 of 2011.***
- (ii) That the amended plaint was not filed in time for the need to include claims arising from the demolition of the buildings/houses comprised in the suit property, the Plaintiff's legal counsel's distraction to attend to his heart surgery patient, and the Plaintiff's procurement of filing fees.***

- (iii) *That the Plaintiffs has since December 2012 been ready to file and prosecute the amended complaint and pursue justice on its merits.*
- (iv) *That the grant of this application does not cause injustice to the Defendant; and it is just and equitable that this application be granted.*

The application is supported by the affidavit of the Applicant, which amplifies the grounds, but I will not reproduce it in detail. Mr. Tony Arinaitwe, Counsel for the Applicant made submissions in support of the application mainly reiterating the Applicant's depositions as to why he could not file the amended complaint in the time granted by the court. Counsel relied on *Orient Bank Ltd v. Avi Enterprises Ltd. Misc. Appl. No. 37/2013 (Arising from C.S No. 147/2012 Commercial Court)* that an application of this nature can be freely allowed in four situations namely:

1. Before expiration of a limited time.
2. After the expiration of a limited time.
3. Before the act is done; and
4. After the act is done.

Counsel argued that the instant case falls in the first category, after expiration of the limited time, and hence the application should be allowed.

Ms. Kagoya, Counsel for Respondent opposed the application mainly relying on the affidavit of Mr. Eric Kenneth L. Okolong, Head/ Legal Counsel for the Respondent Bank. She submitted that **O.6 r.25 CPR** governs the filing of amended pleadings, and that time to amend pleadings lapsed in October 2012 when the Applicant was supposed to file, and hence the application should not be allowed.

Regarding the issue of payment of fees which the Applicant advanced as one of the reasons necessitating amendment, Counsel for the Respondent submitted that there

is no evidence that the Applicant has picked the assessment for the alleged payment at all. Counsel maintained that in *Orient Bank Ltd case (supra)* the court held that reasons for amendment after expiration of time granted must be justified; and that in the instant application, there is no evidence that the Applicant was looking for the money to pay the filing fees.

On whether the Respondent would suffer prejudice, counsel relied on *Eastern Bakery v. Castellino, C.A. C.A. No. 30/1958[1958] E.A 461* that there would be no prejudice if the party could be compensated in cost. Counsel argued that the Respondent would be prejudiced by the amendment because they have already sold the property to another party.

### ***Consideration.***

**O. 6 r. 25 CPR** provides for situations, as the instant one, where leave is granted to the party to amend the pleadings within a limited time, but the party does not do so within the set time. In such a case, a party would not be allowed to amend unless the time is extended by court. The court has wide discretion to allow the amendments to pleadings at any time, but like in all discretions such discretion must be exercised judiciously; and the following are the guiding considerations which court ought to take into account before granting the application;

- (a) ***the amendment should not occasion injustice to the opposite party;***
- (b) ***it should be granted if it is in the interest of avoiding multiplicity of suits;***
- (c) ***it should made, and be in good faith; and***
- (d) ***it must not be expressly or impliedly prohibited by law. See: Gaso Transported Ltd v. Martin Adala Obene, S.C.C.A. No. 4 of 1994.***

It has also been held that an amendment should be freely allowed; provided it is not made so late in the proceedings that it would be unjust to the opposite party,

and that there would be no injustice if the other party can be compensation for by costs. See: *Eastern Bakery v. Castellino (supra)*; *Wamayi v. Interfreight Forwarders (U) Ltd. [1990] II KALR 67.*

In the instant application, the reasons for not amending and filing the pleadings in the limited time set by the court are that just as the amendment was to be done after delivery of ruling granting leave, the houses and buildings comprised in the suit property were demolished, which necessitated the inclusion of damages arising therefrom in the amended plaint for the claim of damages. Further, that the Applicant's counsel had a heart patient with acute complications which necessitated treatment abroad, in India, and that Counsel was centrally coordinating the treatment and travel arrangements. Also, that the preparation and drawing of the amended plaint required filing fees of Shs. 473, 100/= which the Applicant could not immediately raise after the demolition of his houses.

The Respondent opposed the application arguing that the reasons advanced by the Applicant are falsehoods since there are no fees payable on filing an amendment to the plaint; and that if that was the case then the same has not been paid. Further, that the Applicant's Counsel's absence could not stop another lawyer in the same firm from handling the matter, and that there was inordinate delay in filing this application, and that the delay is prejudicial to the Respondent. Also, that the application is *malafide* and only meant to delay or defeat the purchaser of suit property from making use of his land.

Based on case law authorities cited above bearing on issues in this application, it is clear that the major consideration in granting the application of this nature is whether it would be not be unjust or prejudicial to the opposite party; otherwise it should freely be granted. In paragraph 9 of the affidavit in reply, the Respondent

deposes that the amendment would be prejudicial to it, but does not state how. Similarly, in paragraph 10 thereof, the Respondent deposes the application is brought in bad faith, but again fails to demonstrate the bad faith. Regarding the contention that there was delay in filing the application, this is not the correct position given that computation of time, i.e., the fourteen days granted by court, would start from 20/09/2012. The affidavit in reply was filed on 28/03/13, which would certainly not be too long a time in the circumstances.

It is also not true, as contended by the Respondent, that the amendment would delay or defeat the purchaser of the suit property from making use of his land. If the purchaser has already bought the land and the buildings thereon have been demolished, then the amendment of pleadings would not prejudice the Respondent in any way because this application does not seek to include the purchaser as a party to these proceedings.

It is an established principle that the purpose of amending pleadings is to enable courts to finally, conclusively and effectually determine the issues in controversy as between the parties; but not to curtail the parties because mistakes in the conduct of their cases; for these can be atoned for by compensation through payment of costs in any event. This ought to be distinguished from mistakes which are obvious *malafides* or made intentionally, as these would certainly be prejudicial to the other party. I do not consider the reasons advanced by the Applicant in the instant application to fall in that category.

Accordingly, I find that no injustice or prejudice would be suffered by the Respondent. The application is granted, and the time within which to file the

amended plaint is extended by fourteen days from the date of this order. The Applicant shall meet costs of this application in any event.

***BASHAIJA .K. ANDREW***

***JUDGE***

***11/09/2013.***

Mr. Robert Bawutu , holding brief for Mr. Tony Arinaitwe Counsel for the Applicant – in court.

Mr. David Sempala, holding brief for Ms.Kagoya Counsel for the Respondent- in court.

Ms. Justine Namusoke Court Clerk present

Court: Ruling read in open court.

***BASHAIJA .K. ANDREW***

***JUDGE***

***11/09/2013.***