

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**[LAND DIVISION]**

**MISC. APPLICATION NO. 0236 OF 2014**  
**[ARISING FROM CIVIL SUIT NO. 122 OF 2013]**

**SSERUFUSA EDWARD MULEMA MUKASA:..... APPLICANT**

**VERSUS**

**BAMWITE EDWARD (ADVOCATES) & 9 ORS: ..... RESPONDENTS**

**BEFORE HON. MR. JUSTICE HENRY I. KAWESA**

**RULING**

The Applicant moved this Court by Notice of Motion for orders that leave to amend the plaint and add more Respondents be granted.

The application is supported by the affidavit of Sserufusa Edward; the Applicant herein.

He avers that the amendment was necessitated by a need to add more Respondents under O.6 r20 of the Civil Procedure Rules and O1 R10 (4) of the Civil Procedure Rules. He annexed on the application annexure 'A' which is the proposed amended plaint.

During the hearing, the Applicant who represented himself gave a background to the claim since 2010. He then argued that his application would not cause any injustice to the Respondents if granted, since it only seeks to add parties who in his view, participated in orchestrating the alleged frauds on the suit land.

In response, Counsel for the 3<sup>rd</sup> Respondent, who was the only Respondent available on that day, opposed the application for being irregular and incompetent. He argued that the plaint

did not disclose any cause of action against the 3<sup>rd</sup> Respondent and the affidavit in support of his application is silent on the grounds for the application. Counsel prayed that the application be dismissed with costs.

The Applicant pointed out that there was no affidavit in reply by the 3<sup>rd</sup> Respondent and hence his submissions were irrelevant. He referred to Article 126(2) (e) of the Constitution of Uganda and insisted on his pleadings being rightly before Court as per O.6 r17 of the Civil Procedure Rules.

Having listened to the arguments, I resolve the matter as here below:

The law on amendments is that amendments can be allowed by Court at any stage of the proceedings to enable parties determine the real questions in controversy between the parties. (See O.6 r19 of the Civil Procedure Rules). Court however can exercise its discretion to allow amendments, taking into consideration the grounds stated in **Gaso Transport Services Ltd. versus Martin Adala Obene SCCA NO. 04 of 1994** in that:

- a) *the amendment should not work an injustice on the other side*
- b) *the amendment is not brought in bad faith (malfide)*
  
- c) *the amendment is aimed at helping Court to avoid a multiplicity of proceedings*
  
- d) *the amendment is not prohibited by law*
  
- e) *the amendment has been brought with expediency (without delay)*

Furthermore in exercising the discretion the Court further considers whether the amendment has the effect of changing the cause of action, substantially as stated in **Eastern Bakery versus Castelino (1958) EA** and Court should not allow an amendment which substitutes a distinctive cause of action for another or whose effect is to change by means of an amendment, the subject matter of the suit. (Also see **Lubowa Gyaviira & Ors versus Makerere University HC MA NO. 471/2009** and also **Mulwooza & Brothers versus Shah Ltd SC CA NO.26/2010**).

Applying the above law to the facts before me, I first of all need to point out that the Applicant did not enumerate the grounds upon which his application is premised. He only shows that he needs to add more parties, but does not explain what effect the intended additions will have on the cause of action.

However, a close scrutiny of the plaint on the main file and the plaint annexed on the application bearing the intended amendments, shows that the Applicant intends to drastically add more detailed facts and allegations, whose effect materially alters the original cause of action. For instance under paragraphs 9 – 12, he introduces new causes of action which are not part of the original plaint.

This is repeated in paragraph 13 which states the cause of action in different details and facts, which is a major shift from the action as stated in paragraph 8 of the original plaint. In paragraph 8 of the original plaint, the action is stated in terms of '*jointly for visible fraudulent act being carried out regarding the suitland comprised in Block 10, Kibuga Kyadondo Plot 224, Sentamu Road, Mengo Namirembe FRV 56 Folio 16 formerly Plot 129*' yet the proposed amendment is omnibus. The effect is that this proposed amendment goes against the cardinal rules governing amendments as discussed in the laws above.

This Applicant has failed to articulate the purpose of the amendment. There is also lack of coherence under both plaints regarding a precise cause of action against all the Respondents. A reading of the plaints indicates that the Applicant is not sure of what he wants and from whom, so as to candidly state a proper cause of action as it is known in law.

For reasons stated above, I find that the Applicant has failed to prove this application. It is found incompetent and, is accordingly dismissed with costs to the 3<sup>rd</sup> Respondent whose Counsel appeared in Court.

I so order.

.....

Henry I. Kawesa

J U D G E

30/1/2018

30/1/2018

Eria Muka for Karim Hirj (3<sup>rd</sup> Defendant).

Defendant absent.

Applicant/Plaintiff present.

Court: Ruling delivered in the presence of the parties above.

.....

Henry I. Kawesa

J U D G E

30/1/2018