

CS NO.104-18-KALEMA FRANCIS VS BRUHANE SSEKIBINGE (RULING)

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA
(LAND DIVISION)
CIVIL SUIT NO. 104 OF 2018

KALEMA FRANCIS.....PLAINTIFF

VERSES

BRUHANE SSEKIBINGE.....DEFENDANT

BEFORE: HON. MR. JUSTICE HENRY I. KAWESA

RULING

The above suit was re-fixed for scheduling or for parties to raise preliminary objections on the 26th February 2019, Counsel Ngoloba Mohamed for the Applicant/Defendant orally submitted that they filed an application Vide M.A No. 1789 of 18 on 12th November 2018 seeking orders for striking out the amended plaint filed by the Respondent on 11th July 2018 and that as per the procedure, they intend to strike off the application. Patricia Okumu Ringa Counsel for the Respondent/Plaintiff replied that the matter had already been withdrawn by the registrar.

The applicant/Defendant sought leave of this Court to appeal against the registrar's order of allowing the withdrawal of the amended plaint without hearing from the Defendants and without following Order 25 of the Civil Procedure Rules, that the person withdrawing shall pay costs.

Secondly, that following the amendment, the amended plaint replaced the original one which lapsed. That the withdrawal meant the withdrawal of the whole suit. That nothing is being sought to amend and prayed for costs of the withdrawn suit.

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In further reply, Counsel for the Plaintiff avers that the applicant's/Defendant's application has been overtaken by events and that Court should pronounce itself on the status as to whether the amended plaintiff should be struck out or it is overtaken by events. She relied on the case of Nabanja Noor versus Isaac Sendagire & Anor CS No. 182/2014, where it was held that;

“Costs are discretionary. That they have demonstrated that the application has been overtaken by events because they were served late, on 13/02/2019. That the events that took place cannot be blamed on the Respondent/Plaintiff. That had they been aware, they would have informed them”.

Further, that the submissions by Counsel for the applicant/Defendant that the amended plaintiff replaced the original one is flawed as O.6 r18 of the Civil Procedure Rules allows seeking leave to amend pleadings. That the application for leave to amend is fixed for 11th May 2019 for hearing. That the plaintiff of 21st February 2018 is still before Court for determination pending the grant of an application for leave to amend and that the application did not vitiate or remove the originally filed plaintiff.

In rejoinder, Counsel for the Defendant submitted that under O.25 r7 that being an ongoing case, the Plaintiff had to file an application by chamber summons seeking for leave to withdrawal the amended plaintiff. That it could not be done by letter, that all parties had to be heard. Counsel emphasized that O.25 r1 is mandatory in that costs shall follow the withdrawal of the suit. That filing a letter was an abuse of Court process and that they filed their application on 12th November 2018, the notice was on 4th December 2018 and it was not copied or served on them. That out of ignorance, they fixed their application on 8th February 2019 and served on the Respondent on the 13th February 2019. Counsel alleged that they just saw that there is a withdrawal notice to the reply and that, had they known, they could not have fixed the matter.

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He submits further that, it is against justice where a party incurred costs of filing the application and no costs is granted. That it is also against rules of procedure that the Plaintiff proceeds alone and prayed to Court to go against the justice. Further-still, that the 1st plaint filed on 21st February 2018, by filing an amended plaint on 11th July 2018 replaced the 1st one and that following the amendment, there is no original plaint. That the Plaintiff would have applied to amend the amended plaint because the original is no more. That the withdrawal of the amended plaint amounted to a withdrawal of the main suit and award costs to the main suit.

Ruling:

Under O.6 r.20 of Civil Procedure Rules, the Plaintiff may without leave of Court amend his or her plaint once at any time within twenty-one days from the date of issue of summons to the Defendant, or where a written statement of defence is filed, then within fourteen days from the filing of the written statement of defence.

There is Counsel for the Defendant's submission that the amended plaint was filed out of time and he filed Misc. Application No.1789/2018 for the amended plaint to be struck out. As noted under Order 6 rule 20 of the Civil Procedure Rules, the Plaintiff was at liberty without leave to amend his/her plaint at any time within the time specified therein. This means that beyond the time specified above, the Plaintiff was to first seek the leave of Court.

It is on record that the Plaintiff filed an amended plaint after the lapse of the above time which was later withdrawn from the registrar land division by letter on 15th January 2019 under O.25 rule 1 of the Civil Procedure Rules. Since the amended plaint was filed out of time and it had not been validated by Court or the parties, then I find that the amended plaint was void abinitio and could not have any effect on the original plaint.

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As submitted by Counsel for the Defendant, for Court to find that the amended plaintiff filed on 11th July 2018 replaced the 1st one and that following the amendment, there is no original plaintiff would mean to legalize an irregularity in amending pleadings (the plaintiff) before Court. From the record, the original plaintiff was filed on the 21st February 2018, the written statement of defence was filed on the 7th March 2018, and then later, the amended plaintiff filed on the 11th July 2018, this makes the amended plaintiff to have been filed after the expiration of the 14 (fourteen days) which is an irregularity. It follows that a Court of law cannot sanction that which is forbidden by law and once an illegality is brought to the attention of Court, it overrides all questions of pleadings including any admissions made thereon. (See **Makula International Ltd Vs Cardinal Nsubuga & Anor (1982) HCB 11**)

In **Nakiryowa Majorine Kiddu & Anor, versus Maurice Sserugo Kiddu & Anor HCCS No. 587 of 2015** the learned judge noted that;

“it is now clear that the Plaintiffs made the amendment outside the 14 days from filing of the written statement of defence as permitted to them by O.6 r20 of the Civil Procedure Rules and without leave of Court. The amendment was therefore improper”.

On the issue of allowing an amendment at any stage of the suit, the judge went on to state that... *it is my observation however, that before Court can exercise this power, a litigant must seek leave.* He accordingly struck out the amended plaintiff which was filed out of time and without leave of Court.

Basing on the authority of **Nakiryowa Majorine Kiddu & Anor (supra)** and the rules of procedure, I find that there was no amended plaintiff on the record to be withdrawn by the Plaintiff and as such, the alleged withdrawal did not vitiate or remove the original plaintiff filed on 21st February 2018. I also agree with the Defendant’s application to struck out the amended plaintiff Vide Misc. Application No. 1789 of 2018.

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In the premise, I concur with the Defendant's prayer that it is against justice where a party incurred costs of filing the application and no costs is granted. The Defendants are hereby granted costs of Misc. Application No. 1789 of 2018.

I so order

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Henry I. Kawesa

JUDGE

18/03/2019

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18/03/2019:

Okumu Ringa for the Plaintiff.

Golooba Mohamed for the Defendant.

Golooba:

Matter for Ruling.

Court: Ruling delivered to the parties above.

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Henry I. Kawesa

JUDGE

18/03/2019