

MA NO. 1345-2018-SULAIMAN vs IGA FRANCIS (RULING)

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
[LAND DIVISION]
MISC. APPLICATION NO. 1345 OF 2018
[ARISING FROM CIVIL SUIT NO.709 OF 2018]**

SULAIMAN KIGGUNDU::::::::::::APPLICANT/COUNTERCLAIMANT

VERSUS

IGA FRANCIS::::::::::::RESPONDENT/COUNTERCLAIM

BEFORE: HON. MR. JUSTICE HENRY I. KAWESA

RULING

This application was brought by chamber summons under Section 98 Civil Procedure Act Cap 71, Section 33 Judicature Act Cap 13, O.6 rr19 and 31 of the Civil Procedure Rules SI 71-1 for orders that;

1. Unconditional leave be granted to amend the counterclaim,
2. Provision be made for costs of this application.

The application was supported by affidavit sworn by the Applicant. It is deponed therein that the Applicant filed a written statement of defence and counterclaim in 2015 to which he attached a survey report, the pillar of his counterclaim, which was produced by Luwandagga and Luwandagga Licensed Land Surveyors. That unfortunately, the author of this report passed on and his office closed and; thus, cannot present it to Court. It is further added that the Applicant instructed another firm of surveyors who came up with a similar report. That the purpose of the amendment of the counterclaim was to enable tabling of the report to in order to enable Court to determine the reals controversy between the parties. The said report and proposed amended counterclaim were annexed to the affidavit as “A” and “B” respectively.

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The application was opposed by the Respondent through the affidavit sworn by Kamusiime Bright on behalf of the Respondent. She averred that the said survey report had not been attached to the original counterclaim even though it was mentioned therein. Further, that the Applicant's affidavit merely contains allegations because there was no proof that the alleged surveyor was indeed dead or that his office closed. She added that if this was indeed true, the report could nevertheless be tendered in Court through another qualified surveyor.

Both parties filed submissions which I shall consider in the resolution of this controversy.

Resolution

Amendment of pleadings is provided for under O.16 r.19 of the Civil Procedure Rules. It is trite law that leave to amend pleadings is granted on ground that an amendment is necessary to enable Court to determine the real controversy between the parties.

I have looked at what is proposed as an amended counterclaim and discovered that this is a replica of the original counterclaim. Counsel for the Respondent in fact disputed that there was anything to amend. He added that what the Applicant was simply doing was introducing the survey report which he had not attached to the original counterclaim in order to avoid the wrath of O. 6 r2 of the Civil Procedure Rules.

The said provisions require that every pleading to be accompanied by a list of documents, among others.

Being doubtful of whether what was proposed was indeed an amendment, I was forced to look at that definition of what constitutes amendment. It is defined by the **Black's Law Dictionary, 6th Edn**, at page **81**, that an amendment means;

“To change or modify for the better. To alter by modification, deletion or addition. Practice and Pleading. The correction of an error committed in any process, pleading or proceeding at law, or equity which is done either as a course, or by consent of parties, or upon motion of the Court in which the proceeding is pending.”

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What logically flows from the above definition is that what the Applicant proposes is not actually an amendment envisaged under O.6 r19 of the Civil Procedure Rules but something else. I thus agree with Counsel for the Respondent that what the Applicant was attempting to do was simply to introduce evidence of the survey report which he had omitted to attach on his original counterclaim.

I am emphatic in this regard especially where there is not proof that the alleged surveyor is in fact dead or that his office is closed and; also still, if this was in fact true, I am certain there is another way of introducing the same report in evidence through another surveyor. This is a clear example of applications brought in abuse of Court of process.

It is therefore struck out with costs to the Respondent.

I so order.

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Henry I. Kawesa

JUDGE

6/03/2019

6/03/2019:

Kawuzi Peter for Applicant.

Applicant absent.

Sandra Matsiko (for Bwambale David for the 1st Respondent)

1st Respondent present.

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

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Henry I. Kawesa

JUDGE

6/03/2019