

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

[LAND DIVISION]

MISCELLANEOUS APPLICATION NO.0091 OF 2018

(Arising from Civil Suit No. 473 of 2017)

1. JOHN F. SSENGOOBA  
2. SANDRO SSENTAMU  
3. BENJAMIN WAKKANYULE  
4. KIWANUKA JEREMIAH  
5. SEKANDI CHRISTIAN  
6. NABBANJA KAREN  
7. NANFUKA KEISHA:.....APPLICANTS  
VERSUS

1. STANBIC BANK LTD  
2. NANCY RWABULINDOLE *alias*  
NANCY TWASHABA  
3. ALEX MATAMA  
4. MUGABI JULIUS  
5. SIMON WAVAMUNO  
6. STUART KAMYA  
7. COMMISSIONER FOR LAND REGISTRATION  
8. FRANCIS MUGENYI:.....RESPONDENTS

BEFORE: HON. MR.JUSTICE HENRY I. KAWESA

RULING

**MISC. APPLICATION NO. 0091 OF 2018-J.F. SSENGOOBA & ORS VS STANIBIC BANK (U) LTD & ORS  
(RULING)**

The Applicant moved this Court by Chamber summons for orders O.6 rr.79 and 31 of the Civil Procedure Rules and Section 98 of the Civil Procedure Act;

- i) Leave to amend pleadings be granted; and
- ii) Costs be provided for.

The application is supported by the affidavit of John Fisher Sengooba who deponed that the application is made because the filed written statement of defence require that the plaint first be amended to ensure the ends of justice.

The Applicant filed written submissions to which the Respondents filed submissions in reply and the Plaintiff/Applicant filed submissions in rejoinder.

The issues that arise in this application are resolved as herein;

The procedure under O.6r19 of the Civil Procedure Rules in which this application is brought is provided for under O6 r31 of the Civil Procedure Rules which provides that applications under rule 18, 19 and 22 shall be by summons in chambers. This means that all others shall be by notice of motion. The application was therefore correctly filed by way of chamber summons.

The details of what is contained in a Notice of Motion are given under O.52 r1(3) as follows:

*“Every Notice of Motion shall state in general terms the grounds of the application and a copy of any affidavit intended to be used shall be served with the notice of motion*

The provision of O.5 r7 of the Civil Procedure Rules seem to infer that where applications are by chamber summons, *‘all applications by summons shall be in chambers and if supported by the affidavits relied on, shall be attached’*.

These rules are specific to the procedure by motion and hence cannot be said to strictly apply to the procedure by way of chamber summons. The procedure adopted by the Applicant of

pleading the grounds in the affidavits is therefore not in violation of the rules of the procedure and is not fatal to the proceedings.

The application for leave to amend is guided by the following rules of thumb as *espoused* in *Gaso Transport Services (Bus) Ltd versus Obene [1990-1994] IEA 88 (SCU)* wherein the principles governing the amendment of pleadings are stated that;

1. *The amendments should not work injustice to the other side. An injury which can be compensated by the award of costs is not treated as an injustice.*
2. *Multiplicity of proceedings should be avoided as far as possible.*
3. *Application which is made malafide should not be granted.*
4. *No amendments prohibited by law should be granted.*

The above rules of thumb are further guided by the rule that ‘*No amendment should be allowed whose aim is to substitute the cause of action with a new one by way of the proposed amendment. See Edward Kabugo Sentongo versus Bank of Baroda HCT MA NO. 0203 of 2007 (unreported).*

The above rules of thumb makes it imperative for the Applicant to attach a copy of the proposed amendment plaint so that Court examines the same to find out if it passes the stated rules of thumb. In the absence of such a copy, the Court would be in the dark as to what the applicant intends to introduce in the amended plaint.

The scenario in this application is that the Applicant has not shown Court any grounds as to what amendments he intends to introduce. There was no copy of proposed amendments to the plaint filed along with the chamber summons.

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The Applicant's action of filing a supplementary affidavit out of the scheduling time frame allowed by Court is irregular. Moreover, the further action of smuggling on record a purported 'Draft amended plaint' on record, filed together with his submissions in rejoinder is malafide, an abuse of Court process and amount to an ambush against the Respondents. The said application does not pass the rule of thumb above.

This Court hereby finds that the Applicant has not shown that the promised amendments shall not change the cause of action, thereby not prejudicing the Respondents.

I agree with the Respondents that this application is incompetent for reasons as stated above.

The application is therefore rejected with costs to the Respondents.

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Henry I. Kawesa

**JUDGE**

16/04/2019

16/04/2019

Sengooba for the Applicant.

Kakuru for 1<sup>st</sup> Respondent.

Parties absent.

Court: Ruling communicated to the parties above.

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.....

Henry I. Kawesa

**JUDGE**

16/04/2019