

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**LAND DIVISION**  
**MISC.APPLICATION NO.883 OF 2018**  
**(ARISING FROM CIVIL SUIT NO.2776 OF 2017)**  
**(FORMERLY CIVIL SUIT NO.028/2016 AT NAKAWA)**

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**1. JOHN KASULE**  
**2. ENGINEER WAMALA SALONGO GASTER::::::::::::::::: APPLICANTS**  
*(Administrators of the Estate of the Late Christopher Lwanga & Musa Mukasa)*

**VERSES**

**1. THE COMMISSIONER LAND REGISTRATION**  
**2. LUWEERO DISTRICT LAND BOARD::::::::::::::::: RESPONDENTS**  
**3. TREASURE TROVE (U)LTD**  
**4. KAHONG UGANDA INDUSTRIAL DEVELOPMENT**

**BEFORE: HON. MR. JUSTICE HENRY I. KWAESA**

**RULING**

This is an application brought by Chamber Summons for unconditional leave to amend the plaint. It was brought under Order 6 rule 19 & 31 of the Civil Procedure Rules, Section 98 of the Civil Procedure Act & Section 33 of the Judicature Act.

The grounds of the application are contained in the affidavit in support of the 2<sup>nd</sup> Applicant herein Engineer Wamala Salongo Guster and briefly are that;-

- i. That there are many material facts concerning the plaintiff's leasehold interests in this matter which need to be added in order for the Applicants to effectively proceed with this suit.
- ii. That the facts are necessary for the determination of the real questions in controversy between the parties.
- iii. That the proposed amendment will not prejudice the Respondents in any way at all.
- iv. That it is in the interest of justice that the Applicants are granted leave to amend the plaint.

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The 2<sup>nd</sup> Applicant attached the following pieces of evidence to his affidavit in support to justify his application; - *copies of an application for conversion form as annexure B, an application letter to area committee as annexure C, Notice of hearing for grant of free hold as annexure D, and a copy of a draft amended plaint.*

Only the 3<sup>rd</sup> and 4<sup>th</sup> Respondent filed replies to this application which shall be relied on in this ruling.

In reply, the 3<sup>rd</sup> Respondent through Edward Lwembaawo Kiyimba Kalema its managing director by affidavit evidence averred that;-

- i. That there is no valid application as far as the first Applicant is concerned and that this application is only aimed at delaying Court process as the facts sought to be added to the pleadings were within the Applicants knowledge, however that they willfully chose to leave them out.

- ii. That the Applicants are seeking to introduce facts aimed at creating a new cause of action under the guise of an amendment of pleadings which is not allowed by law.
- iii. That the Applicants' claims were originally premised on extension of a lease interest for land comprised in LRV 836 Folio 18 (Block 766 plot No.3 at Nabitunda, Bulemezi East Buganda measuring 129.0 Hectares) which is now sought to be changed to an application for conversion of the said lease interest to freehold interest. And that the application and reliefs sought offend the principles of law governing amendment of pleadings.
- iv. That the application is misleading and does not disclose any ground for the orders sought, and that granting the same will be prejudicial to the Respondent which has already filed its written statement of defence.

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The 4<sup>th</sup> Respondent (*Kahong Uganda Industrial Development*) through Ian Mutibwa the company's former secretary averred that;-

- a. The Applicants' claim to have applied for a conversion of the suit land from leasehold tenure to freehold, however that the attachments indicate an application from customary tenure to freehold tenure which is completely different from the Applicants' allegations.

- b. That the original plaint did not disclose a cause of action and that the instant application is barred by law. That the Applicants' leasehold interest expired in 1976 and the Applicants did not renew the same hence forfeiting their interest in the suit land and that by the time the Applicants purportedly applied for conversion from lease-hold to leasehold, they had no interest or claim of right in the suit land.
- c. That the 4<sup>th</sup> Respondent is the rightful and lawful owner of the suit land and that if the application is granted, the 4<sup>th</sup> Respondent will be greatly prejudiced defending a frivolous suit.

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The 2<sup>nd</sup> Applicant filed his submissions and both the 3<sup>rd</sup> and 4<sup>th</sup> Respondent filed theirs, which are on Court record.

It was Counsel for the 1<sup>st</sup> Applicant's submission that the Applicants have been in occupation of the suit land since 1971 to date conducting farming activities without any adverse claim.

That prior to the expiration of the lease in the suit land that the plaintiffs duly applied for conversion of the lease to freehold under Section 28 of the Land Act before the 1<sup>st</sup> and 2<sup>nd</sup> Respondent which application has not been responded to. That in early 2016, unknown military men in the company of Chinese and other unknown people demolished and burnt structures and other developments on the land and also chased the Applicants' herdsman without any justification leading to the loss of their cattle.

He relied on Order 6 Rule 19 for the law relating to amendments and also cited the case of *Rwakahanda versus Uganda post Telecommunications Corporations, Misc App No 484 of 2014* where Justice Stephen Musota relied on the case of *Gas Transport Services (Bus) Ltd Vs Martin Adala Obene SCCA No.4/94 (unreported)* which sets out the grounds for the grant of the leave to amend as follows;-

- i. *The amendment should not work injustice to the other side; however, any injustice which can be compensated by the award of costs is not treated as an injustice.*
- ii. *Multiplicity of proceedings should be avoided as far as possible and all amendments which avoid such multiplicity should be allowed.*
- iii. *An application which is made malafide should not be granted.*
- iv. *No amendments should be allowed where it is expressly or impliedly prohibited by law.*

In opposition to the above grounds, the 3<sup>rd</sup> Respondent submits that there is no application as far as the 1<sup>st</sup> Applicant is concerned. That the application is indicated to be presented by two Applicants, that there is neither an affidavit in support filed by the first Applicant nor any express indication that the 2<sup>nd</sup> Applicant swore his affidavit for himself and on behalf of the another party. That in any case, where a party indicates that he/she is deposing an affidavit on behalf of another, he is supposed to attach authoring him or her. That the 2<sup>nd</sup> Respondent's application is unsupported by evidence which renders it incompetent and that it should be dismissed with costs.

With this issue, I will agree with Counsel for the 2<sup>nd</sup> Applicant's submission in rejoinder that the position of the law does not require a particular number of affidavits to support an application, *See*. The case of **Otim Talib & 3 Ors versus Uganda Revenue Authority & Anor, HCMA No.94 of 2017** where it was noted that, there is no required number of affidavits to support an application more so, if the would be deponents are going to be talking about the same thing. Since an affidavit in support is sworn by the 2<sup>nd</sup> Applicant herein, I find that it is enough to sustain this application.

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*Back to the application at hand*, the Court's decision in **Interfreight Forwarders (U) Ltd versus East African Development Bank Civil Appeal No. 33/1992** emphasizes pleadings as a system through which pleadings operate to define the real matters in controversy with clarity upon which the parties can prepare and present their respective cases and upon which Court will adjudicate.

Order 6 rule 19 of the Civil Procedure Rules under which this application has been brought states that;

*"The Court may at any stage of the proceedings, allow either party to alter or amend his or her pleadings in such a manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties".*

In **Muhamed Kasasa versus Jasper Sirasi Bwogi, Civil Suit No. 42 of 2008** (unreported) the Court of Appeal held that;

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*Order 6 rule 19 of the Civil Procedure Rules empowers Court to allow either party to the suit to alter or amend pleadings for the purpose of determining the real question in controversy between the parties. However, in allowing the amendment, the Court must use its discretion judiciously and must reach the decision based on the right principles.*

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There are principles upon which an amendment may be granted or denied, these are well enunciated in the case of **Gas Transport Services (Bus) Ltd versus Martin Adala Obene** (*Supra*).

In **Eastern Bakery versus Castelino (1958) E.A 461**, it was noted that;

*“Where an amendment is not any different in quality from the original cause of action, it should be allowed”.*

a) The amendment should not work an injustice to the Respondents

It was Counsel for the 2<sup>nd</sup> Applicant’s submissions in rejoinder that the Respondents have not demonstrated how the proposed amendment shall work an injustice that cannot not be compensated.

One of the determinant factor before Court invokes its discretion to allow the amendment is whether the amendment will put the other party (Defendant) to a disadvantage (*cause an injustice*), can the injustice be compensated by costs, if it can, then the amendment ought not to be refused.

It has to be noted that an amendment under Order 6 rule 19 of the Civil Procedure Rules is for the purpose of determining questions in controversy between parties, it ought to be allowed if thereby the real and substantial questions can be raised between the parties, and multiplicity of proceedings can be avoided, see *Ntungamo District Local Council versus John Karazarwe (1997) III KALR 52.*

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In the instant application, the Applicants are seeking an amendment alleging that they filed Civil Suit No. 2776 through their former Counsel M/s. Anguria, Aogon & Co. Advocates, that the plaint which was drafted did not capture some material facts and that the amendment will help Court to properly determine the questions in controversy between the parties. He attached documents that the Respondents claim were in the knowledge of the Applicants since he *attached them as annexure C* to the plaint in Civil Suit No. 2776 See Paragraphs 2, 3, 4 and 5 of the affidavit in support of the application of the chamber summons and Paragraphs 5 and 6 of the 3<sup>rd</sup> Respondent's affidavit in reply.

I find that, this is reason that the Applicants are not introducing new evidence to the suit and the Respondents cannot be prejudiced by what was already in their knowledge.

**A. The amendment involves a change in the nature of action**

It was the Respondents' case that the alleged amendment tends to introduce a new cause of action where in, that the claims in Civil Suit



No. 2776 was premised on extension of the lease interest for land comprised in LRV 836 Folio 18 and now that the Applicants are claiming conversion of the suit land from free-hold to leasehold.

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Upon perusal of the proposed amended plaint and the former plaint, the Applicants/plaintiffs' cause of action is primarily based on the fraudulent transfer of the suit land to the 3<sup>rd</sup> and 4<sup>th</sup> Respondents by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents particulars of which are well spelt out in paragraph 9 of the draft amended plaint as well as the former plaint. The documents which have been attached by the 2<sup>nd</sup> Applicant that is to say *Annexure B, C, and D* indicate a step taken by the Applicants/plaintiff to convert the suit land and not to extend a lease as earlier put in the former plaint.

This is a minor error which can be rectified by an amendment as noted in the Court's decision in **Interfreight Forwarders (U) Ltd versus East African Development Bank** (*Supra*) that pleadings aim at defining the real matters in controversy between the parties with clarity upon which the parties can prepare and present their respective cases and upon which Court will adjudicate. And also Section 100 of the Civil Procedure Act and O.6 R10 of the Civil Procedure Rules – provides that Court can at any time on such terms as to costs or otherwise amend any defect or error in any proceedings for as long as it is for the purpose of determining the real question or issue raised.

In the result, I find merit in this application and it is accordingly allowed, the amended plaint is hereby adapted and the 4<sup>th</sup>

Respondent's claim as to ownership should be proved in the main suit.

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Henry I. Kawesa

**JUDGE**

15/07/2019

15/07/2019

JACKLINE Natukunda on brief for Veronica Namuswe for the 3<sup>rd</sup> Respondent.

Applicants in court.

Counsel for the Applicant not in court.

Grace: Clerk.

Counsel:

Matter for Ruling.

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

Sgd:  
Atukwasa Justine  
**ASST. REGISTRAR**  
15/07/2019