

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
LAND DIVISION
MISCELLANEOUS APPLICATION NO 1930 OF 2021
(CIVIL SUIT NO. 761 OF 2021)

5
USHANG LTD.....PLAINTIFF

VERSUS

1. AIRTEL UGANDA LTD

10 **2. AMERICAN TOWER CO. LTD.....RESPONDENTS**

Before: Lady Justice Alexandra Nkonge Rugadya

RULING:

Introduction:

15 The issue in this application rotates around whether **M/s Eaton Towers Co. Ltd** should be added as co-defendant in **HCCS No. 761 of 2021**. Both sides filed pleadings and submissions, which I have taken into consideration in my decision.

The detailed grounds of this application are contained in the affidavit in support filed by Mr. Kaluubi Frobisher Allan, the Managing Director of the applicant company, represented by **M/s Kaweesa & Co. Advocates**.

20 The 2nd respondent represented by **KTA Advocates** filed a reply through the affidavit of Mr. Kansiime Timothy, the legal manager of **American Tower Uganda Ltd**. (ATC).

Consideration of the issue:

25 The joinder of parties to pleadings is governed by **order 1 rule 10 (2) of the CPR**. It provides that court may at any stage of the proceedings either upon or without the application of either party, and on such terms as may appear to the court to be just add a person who is not a party as a plaintiff or defendant to the suit.

The 1st respondent did not file a response to this application, the assumption is made therefore that the company had no objection to this application. The 2nd respondent company on its part



and who according to the applicant brought **M/s Eaton Towers Co. Ltd** on board filed a reply objecting to the addition of that company as a third defendant.

According to the applicant, the respondents admitted that the said company was in occupation. The 2nd respondent in its response argued that **M/s Eaton Towers Co. Ltd** is a non-entity but did not present court with any evidence to prove that assertion.

That the amendment introduces a new cause of action not pleaded in the plaint, which will warrant amendments to its pleadings. That the application is an abuse of court process and without merit, as it drags in ATC (2nd respondent) into a suit in which it is not even a proper party.

Resolution by court:

Order 1 r.10 (2) of the CPR is to the effect that court may at any stage of the proceedings either upon or without the application of either party, and on such terms as may appear to the court to be just add, a person who is not a party as a plaintiff or defendant to the suit.

Furthermore, an amendment may be introduced to the pleadings for as long as it does not occasion an injustice to the opposite party, it is not prohibited by law; it is in the interest of justice to avoid a multiplicity of suits and the application is made in good faith. **GASO Transport Services (BUS) Ltd vs Martin Adala Obene [1990-1994] EA 88.**

By virtue of **Order 1 r.10 (2) of the CPR** therefore, this court has the requisite powers to exercise its discretion to add a party, even without an application by the party. Thus where for instance the party to be added is in occupation of the land as alleged to be the case in this application, it becomes imperative for court to accord that party a fair hearing in accordance with the rules of natural justice. The party objecting must prove how a court in allowing or giving an ear to a third party would prejudice the objecting party's interests in the matter.

Learned counsel for the 2nd respondent in submission referred to **Order 6 rule 20 of the CPR**, which provides that a plaintiff can amend its plaint within 14 days from the date of filing the WSD. That since the amendment sought is outside the period as stipulated, and introduces a new cause of action, it ought to be disallowed.

I would disagree, with due respect. The said provision is not applicable to the instant application. The rule refers to plaintiff amending pleadings, *without leave of court*, which is not the position in this case.

Adding another party to a suit may entail consequential amendments to pleadings which order ordinarily court would not be inclined to deny. It has the powers to allow the addition of another party by virtue of **order 1 rule 10(2)** and **order 6 rule 20 of the CPR** cannot therefore be



interpreted as a removal of the discretion to grant an amendment, for as long as it is perceived to serve the interest of justice, and/or alter the cause of action.

I have had the occasion of reading the draft amendment to the plaint and I am not satisfied that the amendment as alleged seeks to introduce a fresh cause of action, prejudicial to the interests of the 2nd respondent.

The 2nd respondent's other argument in respect to which he raise a PO in this application is that the 2nd respondent is a non-entity.

In *paragraph 6c* of its WSD, it is averred that:

...upon the acquisition of Uganda Towers Ltd by Eaton Towers (Uganda) Ltd in 2018 the site and sub-lease was brought under and is still under the management of Eaton Towers Uganda Ltd and not ATC Ltd the nonexistent entity or even ATC (U) Ltd.

The above provision in the first place acknowledges the fact that **Eaton Towers (Uganda) Ltd** is in occupation and has vested interest in the suit land. Secondly, it seems to suggest that American Tower Company, Ltd, American Tower Uganda Ltd and Uganda Towers Ltd (referred to as a sister company to the 1st respondent by the 2nd respondent in its WSD) could be separate or distinct bodies. These terms have been invariably applied in the pleadings on record, though without clear explanations.

Besides is the fact that the 1st respondent, M/s Airtel Uganda Ltd which was in position to know about the status of Uganda Towers Ltd being its sister company; the existing relationship between them; and its legal status if any, had no response to offer at this stage. Even more confusing is whether or not the reference to ATC Uganda Ltd can be perceived to be a reference to Uganda Towers Ltd.

It strikes this court as odd therefore that in the *1st paragraph* of the affidavit in reply by Mr. Kansiime Timothy, makes his averments as the legal manager of **ATC Uganda Ltd**. The nexus between his company and American Tower Company listed as the 2nd respondent/defendant in this application was not made out and indeed not a matter for this application.

But one is left wondering, in which capacity then did the legal manager of **ATC Uganda Ltd**, e depone the affidavit in support of American Tower Company Ltd, (the 2nd respondent), perceived to be a non-existing entity.

Whatever explanation one may choose to attach to those specific questions, and be that is may, the plaintiff has the right to choose which party to sue, and to my mind the addition of another party to the suit: **M/s Eaton Towers Co. Ltd** ought not to be denied merely on the basis of the discrepancies as detected in the names of the rest of the parties in the suit.



That duty to explain the variations would lie with the respondents/defendants, thus making the issues raised by the 2nd respondent also triable matters under this suit.

The application to add **M/s Eaton Towers Co. Uganda Ltd** therefore succeeds. Costs in the cause.

5


Alexandra Nkonge Rugadya

Judge

20th December, 2021

Delivered by email
20/12/2021