

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(LAND DIVISION)
MISCELLANEOUS APPLICATION NO.1783 OF 2021
(Arising out of Civil Suit No.97 of 2016)

KIRONDE ASHIRAF:.....APPLICANT

VERSUS

1. MURUNGI JOYCE

2. BALYESIMA SACCO LTD

3. THE MICROFINACE SUPPORT

CENTER:.....RESPONDENTS

Before: Lady Justice Alexandra Nkonge Rugadya.

RULING

Introduction:

This applicant through his lawyers ***M/s Bbale & Partners Advocates & Legal consultants*** brought this application by way of Chamber Summons under ***Section 98 of the Civil Procedure Act Cap 71 and Order 6 rules 19 & 31 of the Civil Procedure Rules SI 71-1*** seeking orders that:

- 1. The applicant be allowed to amend his pleadings;***
- 2. Costs of the application be deferred until the final determination of this suit.***

The grounds upon which the application is premised are contained in the affidavit in support of the application deponed by ***Mr. Rogers Luswata***, an associate attached to ***M/s Bbale & Partners Advocates & Legal Consultants***, duly authorized to swear the affidavit on behalf of the applicant.

Briefly, the deponent states that the applicant instituted ***Civil Suit No.97 of 2016*** against the respondents for a declaration that the powers of attorney executed between the 1st & 2nd respondents in respect of land comprised in ***Kyadondo Block 98 plot 379*** (hereinafter referred to as the 'suit land') were null and void on grounds of fraud.

That while drafting the plaint, the deponent indicated that on or around 18th day of March 2014 the applicant/ plaintiff purchased the suit land measuring approximately 1 acre from the 1st respondent/ 1st defendant but upon perusal of the 1st respondent's written statement of defence, he noticed that the parties agreed on ***Ugx.60,000,000/= (sixty million shillings)*** and that on the 3rd day of February, 2014, the applicant/plaintiff deposited ***Ugx.1,500,000/=***



(one million five hundred thousand shillings) as part payment leaving an outstanding balance of **Ugx.58,500,000/= (fifty eight million five hundred thousand shillings).**

In addition, that upon further interviewing the applicant, he confirmed that the agreement was executed on 3rd February, 2016 and not 18th March, 2014 as earlier indicated in the
5 plaint and that amendment of the same does not amount to a fresh cause of action.

Further, that the applicant intends to include in the amended plaint, prayers that the court declares him the lawful owner of the suit land and that the 3rd respondent unconditionally releases the certificate of title to the applicant.

None of the respondents opposed the application despite having been effectively served with
10 court process.

Consideration of the application.

I have carefully read and considered the submissions of counsel, the details of which I shall not reproduce herein.

Order 6 Rule 19 of the CPR empowers the Court to grant leave to a party to amend their
15 pleadings at any stage of the proceedings. It provides as follows:

“The court may, at any stage of the proceedings, allow either party to alter or amend his or her pleadings in such 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. ”

20 The principles governing the amendment of pleadings as laid down by courts of law include the following;

- a. ***Amendments are allowed by the courts so that the real question in controversy between the parties is determined and justice is administered without undue regard to technicalities;***
- 25 b. ***An amendment should not work an injustice to the other side. An injury that can be compensated by an award of damages is not treated as an injustice;***
- c. ***Multiplicity of proceedings should be avoided as far as possible and all amendments which avoid such multiplicity should be allowed;***
- d. ***An application that is made malafide should not be granted;***
- 30 e. ***No amendments should be allowed where it is expressly or impliedly prohibited by any law;***
- f. ***The court shall not exercise its discretion to allow an amendment which has the effect of substituting one distinctive cause of action for another.***

(See: ***Gas Transport Services (Bus) Ltd vs Obene (1990-1994) EA 88; Mulwooza & Brothers Ltd vs Shah & Co. Ltd, SCCA No. 26 of 2010; Ushang Limited vs Airtel Uganda***
35



& American Tower Co. Ltd Miscellaneous Application no. 1930 of 2021 and Okello Wilbert vs Obel Robert Miscellaneous Application No.97 of 2020)

Applying the above principles to the instant application, it is the finding of this court that the applicant has ably demonstrated sufficient cause warranting the grant of the instant application.

Upon perusal of the proposed amended plaint attached to the affidavit in support, I am satisfied that the same does not substitute one distinct cause of action for another or introduce any new cause of action.

The applicant has shown by affidavit evidence that in drafting the plaint, the lawyer left out some facts and/or wrongly stated some facts which were material to the just determination of the case and it was until after seeking further clarification that it was established that some facts had been wrongly stated and some omitted and hence this application.

Based on this, court finds that the amendment will enable it to fully and finally determine all the questions in controversy thereby avoiding a multiplicity of suits.

Court is further convinced that the application has not been brought in bad faith and has no potential of occasioning an injustice to the respondents.

The applicant has therefore satisfied the court that they are entitled to be granted leave to amend his plaint in the main suit. The application therefore succeeds and is accordingly granted in the following terms;

1. The applicant shall file and serve the amended plaint within 14 days from the date of delivery of this ruling.

2. No orders as to costs.

I so order.



Alexandra Nkonge Rugadya

Judge

30th June, 2022

Delivered by email
Alexadya
30/6/2022