

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**(LAND DIVISION)**  
**MISCELLANEOUS APPLICATION NO. 1243 OF 2022**  
**(ARISING FROM C.S NO. 230 OF 2008)**

**ST. STEPHEN NURSERY DAY &  
BOARDING PRIMARY SCHOOL::::::::::::::::: APPLICANT**

**VERSUS**

**SARAH NAKAYIMA & 3 OTHERS::::::::::::::::: RESPONDENTS.**

**BEFORE: HON. MR JUSTICE TADEO ASIIMWE.**

**RULING**

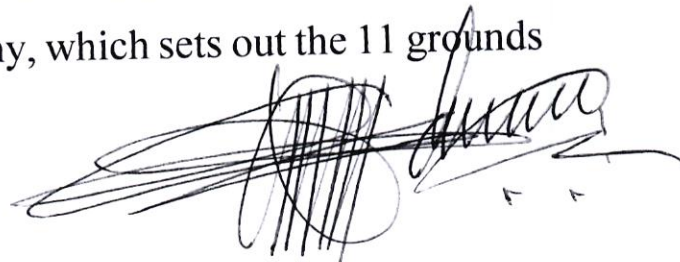
**INTRODUCTION:**

The Applicant brought this application by way of Chamber Summons under *Order 6 Rules 19 & 31 of the Civil Procedure Rules (CPR) and Section 98 of the Civil Procedure Act (CPA)* seeking orders that:

(a) The Applicant be given leave to amend the written statement of defence and counter claim in Civil Suit No. 230 of 2008.

(b) Costs be in the cause.

The application is supported by an affidavit sworn by Nyende Francis Kiiza, a Director in the Applicant Company, which sets out the 11 grounds of the application, but briefly that:



The Applicant against her that was not disclosed in the respondent's pleadings in the main suit and the applicant desires that the legal questions be addressed arising from the said Judgement and as such be included in the intended amendment of WSD and counter claim so that the real questions affecting the suit property can be finally determined.

That the property in the main suit is valued 5 billion and there issues of fraud which fact was not pleaded by either party to enable court determine the real question in controversy.

That that it would cause multiplicity of cases if the amendment is not allowed.

That the amendment will not prejudice the respondent's case and it is allowed in law.

That it just and equitable that this application is allowed.

At the hearing, the Applicant was represented by Counsel Brian. K Tindyebwa while the Respondent was represented by Lutakome and both counsel were directed to file written submissions. The Applicant filed submissions but the respondent never filed submissions by 1<sup>st</sup> of august as directed by Court. Therefore, I have deemed it that the Respondent chose not to file any submissions and I shall proceed to write the ruling only relying on the pleadings and submissions of the applicant.

### **ISSUES.**

Whether the Applicant has shown grounds to be granted leave to amend his WSD in the main suit.



## RESOLUTION BY THE COURT

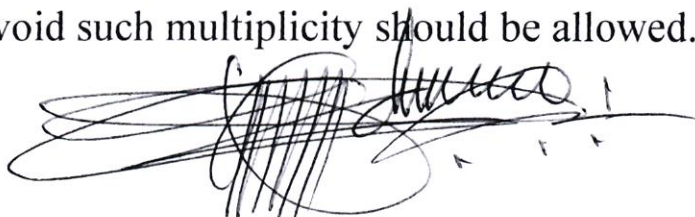
*Ordinarily the application stands unopposed and the same would be summarily allowed. However it is important to consider the law under which such application are permitted.*

*Order 6 Rule 19 of the CPR empowers the Court to grant leave to a party to amend their 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."*

The principles that have been recognized by the courts as governing the exercise of discretion to allow or disallow amendment of pleadings have been summarized in a number of decided cases to 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.
- 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.

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d). An application that is made malafide should not be granted.

e). No amendments should be allowed where it is expressly or impliedly prohibited by any law.

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: *Gasu Transport Services (Bus) Ltd vs Obene (1990-1994) EA 88; Mulwooza & Brothers Ltd vs Shah & Co. Ltd, SCCA No. 26 of 2010; and Nicholas Serunkuma Ssewagudde & 2 Others vs Namasole Namusoke Namatovu Veronica HCMA No. 1307 of 2016.*

Counsel for the Applicant in his pleadings and submissions was alive to the above principles as set out and implored the Court to find that the Applicant has satisfied the grounds for grant of leave to amend applicant's pleadings.

I do not find any prejudice likely to be suffered by the Respondent if the Application is granted.

In the circumstances therefore, I am satisfied that this application has not been brought in bad faith and has no potential of causing an injustice or prejudice against the Respondent. I am further satisfied that grant of the amendment will enable the court to fully and finally determine all the questions in controversy between the parties thereby avoiding a multiplicity of actions.

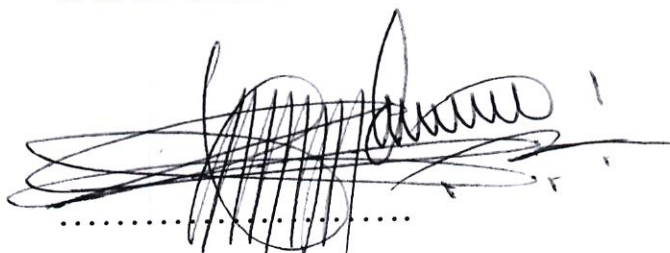
Accordingly, the Applicant has satisfied Court that he is entitled to be granted leave to amend his WSD in the main suit. The application has merit and the same is hereby allowed with orders that:

The Applicant is granted leave to amend his WSD in Civil Suit No. 230 of 2008.

The Applicant shall file the amended WSD within 15 days from the date of delivery of this Ruling.

The costs of this application shall abide the outcome of the main suit.

It is so ordered.

A handwritten signature in dark ink, appearing to read 'Tadeo Asiimwe', is written over a horizontal dotted line. The signature is stylized with loops and a long horizontal stroke.

TADEO ASIIMWE

**JUDGE**

31/10/2022.