

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(LAND DIVISION)

MISCELLEANOUS APPLICATION NO. 1403 OF 2022
(ARISING FROM C.S NO 87 OF 2005)

ABDU NASSAR:.....APPLICANT

VERSUS

YESERO MUGENYI AND ANOTHER:.....RESPONDENTS

BEFORE: HON. MR JUSTICE TADEO ASIIMWE.

RULING

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

1. The applicants be granted leave to further amend his plaint to add 4 defendants to the suit and include other relevant facts that have come to the knowledge of the applicant after filing of the suit.
2. In alternative strike out paragraphs 26, 27, 28, and 30 from the 1st defendant's witness statement which raises new allegations.
3. The costs of this application be provided for.



The application is supported by an affidavit sworn by Abdu Nasser, the Applicant. The grounds of the application are there in set in the affidavits and the chamber summons, but briefly that:

1. That the 1st defendant raises new allegations in his witness statement which were not originally encompassed in his amended written statement of defence and alludes to knew parties that are necessary parties for effectual and complete disposal of the suit.
2. That the plaintiff/applicant has now discovered new evidence relating to the alleged cases, and that it is necessary to amend the plaint and adduce the evidence to prove the fraudulent manner in which the suit property was disposed of.
3. That the intended 2nd, 3rd, 4th and 5th defendants participated or were privy to the fraudulent dealings in the suit property and that they ought to be joined as defendants to this suit for a complete and effectual disposal of the issues in this matter.
4. That is equitable that the orders sought be granted.

Representation.

At the hearing, the Applicants were represented by Counsel Peter Mukidi Walubiri & Ita Kasaija while the Respondents were represented Ms



kiboneka and co Advocates. Both counsel were directed to file written submissions which they did.

Issues.

1. Whether the Applicant has shown grounds to be granted leave to amend its plant in the main suit.
2. Whether the stated paragraphs in the 1st defendant's witness statement can be struck out.

Resolution.

In his written submissions, counsel for the applicant argued that the 1st respondent filed and served a supplementary affidavit after the applicant had filled his affidavit in rejoinder and submissions in the suit. That the supplementary affidavit introduces new evidence to which the applicant cannot respond to at this stage. That the supplementary affidavit was filed and served outside the timelines set by this honorable court and that the said affidavit was irregularly filed without leave of court and therefore should be struck out.

He further submitted that this application was brought in time and that the applicant has a cause of action against the intended defendants since they played a role in the sale of the suit. That the issue whether or not there actions were fraudulent or not is an issue to be determined by this court



after the parties have led evidence that therefore the intended parties are necessary parties for proper disposal of the case.

On the other hand, the respondents submitted that this application should fail for reasons that it contains material falsehoods, lacks merit and an abuse of court process and time barred by reason of which court ought to dismiss it with costs. The applicants are seeking an order to further amend the plaint to add parties for the second time. That their alternative prayer to strike out some paragraphs in the plaint raises new allegations that are a fundamental departure from their pleadings. Further that the applicant and his witnesses have already testified and given all their evidence in the main suit and the applicant's case is accordingly closed. That on this basis, the court should deal with the issue of time limitation than allow an amendment intended to delay court process.

The law.

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.
- 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.
- g. 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: Gaso 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 working an injustice or prejudice against the Respondents since the hearing has not yet commenced. 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 its plaint in the main suit. The application has merit and the same is hereby allowed with orders that:

1. The Applicant is granted leave to further amend his plaint in Civil Suit No. 87 of 2005 to add 4 defendants.
2. The Applicant shall file the amended plaint and serve the respondents in accordance with the law.

3. 1st defendant's witness statement remains as is to be dealt with at trial.
4. The main case is opened for purposes of effecting the amendment.
5. The costs of this application shall abide the outcome of the main suit.

It is so ordered.



TADEO ASIIMWE

JUDGE

23/11/2022.

