

- 1. SSEBINA DAVID**
- 2. MOSES WADDIMBA
SSENTONGO DDIBA**
- 3. NAKAYE JENNIFER :::::::::::::::::::: APPLICANT**
- 4. NANTONGO EREESI**
- 5. SSEKITOOLEKO GEOFFREY KABAALE**

1. PEARL DEVELOPMENT GROUP LTD
2. H.H THE KABAKA OF BUGANDA
Sued thru his Attorneys
Prince David K Wasajja and
Apollo N. Makubuya
3. BUGANDA LAND BOARD
4. MASTULA MULONDO

..... RESPONDENTS

RULING.

1. This was an application by way of summons in chamber brought under Order 6 rules 19 and 31 of the Civil Procedure Rules(CPR) for orders that: -,


Handogay:-

- i) The Applicants be allowed to amend the plaint.
- ii) The costs of this application be provided for.

Background;

- 2. The Applicants instituted Civil Suit No. 927 of 2019 and the same was amended without leave on 29th November 2019. That the 1st and 4th respondents filed their written statements of defences however the efforts to trace the written statement of defence of the 2nd and 3rd respondents was in vain until much later when the applicants were only served with the same in mid-2021.
- 3. That the Applicants' seek to amend the plaint upon perusal of the 2nd and 3rd Respondents written statement of defence.

Applicant's evidence;

- 4. The grounds of the application are contained in the affidavit in support of the application deposed by **MOSES WADDIMBA SSENTONGO DDIBA** the 2nd Applicant, and are briefly that: -
 - i) That the 2nd and 3rd Respondents' written statement of defence was filed late as it was dated 9th March 2020.
 - ii) The same raises issues that need to be addressed hence the need to amend the plaint if all issues in controversy were to be addressed and to avoid multiplicity of suits. 

1st Respondent's evidence;

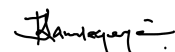
5. The 1st Respondent filed an affidavit in reply deposed by **KATRICK HALAI** which briefly states as follows;

- i) That the application seeks to cure defects in the claim and to defeat the 1st Respondent's defence that the suit is barred by limitation and seeks to introduce a new cause of action.
- ii) That the Applicants already amended their plaint on 25th November 2019 to which the respondent filed a written statement of defence. The applicants did not exercise their right to reply to the written statement of defence but now seek to amend their plaint to respond to the written statement of defence.

4th Respondent's evidence;

6. The 4th Respondent, **MASTULA MULONDO** opposed the application as well and filed an affidavit in reply which briefly states as follows;

- i) That the intended amendment of the plaint seeks to fill in the gaps in the plaintiffs' case which is tainted with mala fides and



unconscionable motive aimed at prejudicing the respondents' defense.

ii) That the suit ought to be amended is a nullity in law for being barred in law and no amendment can be allowed to cure a nullity.

iii) That the purported proposed amendments are misconceived, calculated to introduce a new cause of action and/or grounds with a misguided hope that they will validate an incurable defective suit/plaint.

Representation;

7. The Applicant was represented by Mr. Ssenkooba John Fisher of M/s John F Ssenkooba & Co. Advocates whereas the 1st Respondent was represented by Mr. Rodney Nganwa of M/s S & L Advocates and the 4th Respondent was represented by Kankaka Ali and Gwokyalya Jamilar of Kyazze, Kankaka & Co. Advocates.

8. Parties filed their affidavits and written submissions which I have considered in the determination of this application except for the 2nd and 3rd Respondents.



Issues for determination;

- i) Whether the applicants should be granted leave to amend their plaint?***

Resolution and determination of the issue;

9. Before I determine the issue in controversy, I wish to address the affidavit in rejoinder filed by the Applicants rejoining the 4th Respondent's affidavit in reply. I find the same to be scandalous and an attack on the person of 4th respondent.
10. Affidavits should be drawn with guidance of the provisions of Order 19 rule 3 of the Civil Procedure rules. An affidavit should contain true facts, being statement on oath designed for use as proof in Court of Law **(Yoakim Mwene Habyene v Attorney General SCCA No. 4/1996, [1996] III KARL 23**
11. They should be restricted to giving evidence to the issue in contention and not a means of expressing personal feelings and beliefs against a fellow litigant.

This Court deprecates the unorthodox manner of drafting affidavits by some practitioners before Court. Whereas Counsel has a duty to carry out the client's best instructions, Counsel owes a higher duty

Hambrey

to Court not to reduce Court into a market place or theatre where the kind of exchanges as obtained in this case is allowed to reign, without restraint. Counsel should not allow the steam of their client's dispute to cloud their judgement, so much so that Counsel end up carrying out instructions which constitute rules infraction.

(Okwonga George & anor v Okello James Harrison MA No. 132 of 2021)

12. Just as pointed out by My Learned Brother George Okello J in the above authority, such act constitutes an abuse of Court process hence this Court therefore strikes out the affidavit in rejoinder to the 4th Respondent's affidavit in reply and Advocates are hereby cautioned against such behavior.

13. I will now proceed and determine the issue in this application.

14. The objective of allowing parties to amend their pleadings is to enable them to alter their pleadings so as to ensure that the litigation between them is conducted not on the false hypothesis of fact already pleaded or relief or remedy already claimed but rather on the basis of a true state of facts or true relief or remedy which the parties intend to rely on or to claim.



15. Order 6 rule 19 of the Civil Procedure Rules provides that the Court may at any stage of the proceedings allow either party to alter or amend his/her pleadings in such manner and such terms as may be just and all such amendments shall be made as may be necessary for the purpose of determining the real question in controversy between the parties.

16. The object of amendment of pleadings is to enable the parties to alter their pleadings so as to determine the true substantive merits of the case, having regard to substance rather than form. **(Sarah Nyakato v Lin Jeng Liang aka Lin Jeff MA No. 316 of 2022)**

17. The recognized principles governing the exercise of discretion in allowing amendment of pleadings are as follows;

- i. That the amendment should not work injustice to the other side. An injury that can be compensated for by way 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 made mala fide should not be granted.*
- iv. No amendment should be allowed where it is expressly or impliedly prohibited by any law (limitation of action)*

(Gasu Transport Services Limited v Marti Adala Obene SCCA 4 OF 1994 [1994] VI KALR 5)



18. In the application at hand, the applicants filed their suit sometime in 2019, the 1st and 4th defendants (now respondents) filed their written statements of defence after which the applicants amended their plaint in November 2019.
19. The Applicants now seek to amend their amended plaint after receiving the written statement of defence from the 2nd and 3rd defendants. Under both circumstances the Applicants have not filed any reply to the written statements of defence of the defendants but rather opts for amendment of the plaint.
20. Order 6 rule 9 gives the plaintiff a right to reply to issues raised in a written statement of defence. This right was not exercised by the Applicants but instead opted for amendment.
21. It should be noted that Court's discretion is only exercised where the written law does not provide a way out or possible solution to a legal issue, which is not the case at hand.
22. It is trite law that a party cannot amend his/her pleadings to defeat a defence. **Shell Uganda ltd Versus C& A Tours and travel operators Uganda ltd MA No. 955 of 2016.** The respondents raised defenses like the Applicant's suit being barred by the law of

limitation, the plaintiffs have no cause of action and through the amendment they wish to introduce a new one, the plaintiffs having no locus standi and from the reading of the intended amended plaint attached on the application, the applicants are addressing the same issues which is rather prejudicial to the respondents.

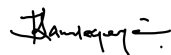
23. Further the amended plaint does not introduce any matter in controversy which can't be handled by the pleadings on record.

24. The intended amendment is an afterthought, it is against the law of limitation, mala fide and it is intended to whisk away crucial facts of the case at the expense of the respondents by distorting evidence already adduced by way of pleadings.

25. For those reasons, I find that this application has not passed the test for Court to grant the applicants leave to amend their pleadings hence the same fails and stands dismissed.

26. Costs to be in the main cause.

I SO ORDER.



NALUZZE AISHA BATALA

JUDGE

04/03/2024

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