

THE REPUBLIC OF UGANDA
THE INDUSTRIAL COURT OF UGANDA HOLDEN AT KAMPALA
LABOUR DISPUTE CLAIM No. 31 OF 2015
(Arising from HCT-CS: No. 149 OF 2011)

Between

STANLEY KIJJAMBU..... CLAIMANT

Versus

WAMALA GROWERS CO-OPERATIVES..... RESPONDENT

BEFORE

1. Hon. Chief Judge Ruhinda Asaph Ntengye
2. Hon. Lady Justice Linda Tumusiime Mugisha

PANELISTS

1. Mr. Ebyau Fidel
2. Mr. Micheal Matovu
3. Mr. Anthony Wanyama

RULING

This ruling arises out of a preliminary objection raised by the claimant.

The Objection is a protest against the respondent for changing the response to the suit as filed and responded to in the High Court.

According to the claimant, the respondent amended its written statement of defense without seeking leave of this Court under order 6 rule 19 of the Civil Procedure Rules.

According to the respondent no substantial amendments were made to cause any prejudice or present a different defense to the Court and the respondent merely caused slight changes in phraseology of pleadings/ paragraphs to make them more comprehensible than before.

Rule 19 of order 06 of Civil Procedure Rules provides

“The Court may at any stage of proceedings allow either party to alter or amend his pleadings in such a 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 questions in controversy between the parties.”

The claimant sued the respondent in the High court and prepared a plaint that contained pleadings.

The respondent filed a written statement of defense that controverted the allegations in the plaint.

Following the transfer of the file to this Court, both the plaintiff and the defendant were required to comply with **Rule 5 of the Labour Disputes (Arbitration and settlement) (Industrial Court Procedure) Rules 2012** which provides that each party file their pleadings in the Court by memorandum in the case of the plaintiff, who then becomes a claimant, and by a memorandum in reply in the case of the defendant, who becomes a respondent.

The contention of the claimant is that in the process of redrafting the written statement of defense to comply with the above rule of Court, the respondent altered the pleadings without seeking leave of this Court as required by **Rule 19 of order 06 of Civil Procedure Rules**.

We have looked at and internalized both the original written statement of defense and the memorandum of response, and our view is that they do not substantially differ. Although a mere changing of the title of the pleadings from **“written statement of defense”** to **“memorandum of reply”** without disturbing any other word in the whole document would have sufficed to

comply with rule 5 of the rules of this Court (Supra), the claimant went ahead to paraphrase and re-paragraph the written statement of defense to, in his view, make it more comprehensible.

In our considered view the purpose of order 6 rule 19 of the CPR is to allow the parties to make necessary adjustments so as for the Court to be able to determine the issues. It is the contention of the claimant **that paragraph 2, 3, 6(a), (b),(c), (d),(e) and 7 of the response to the claim** introduced new grounds that were never envisaged in the original suit filed in the High Court and that they were intended to introduce new evidence that was not pleaded in the written statement of defense. He therefore seeks an order to expunge them from the record.

In the first place we do not think that the need for rephrasing and paraphrasing the same content without changing meaning of the same matter would call for an application for leave to amend the same since in our view the pleadings would not change at all. This is especially so when the matter was already filed in the High Court Civil Division. Time is of essence and therefore only very necessary applications ought to be filed.

The Court is ordinarily made aware of the case of each of the parties and each of the parties is made aware of the case of the other through pleadings.

The assumption is that through pleadings both parties are ready to be heard and the Court prepares for the hearing on the available information in the pleadings.

Both parties having availed pleadings to either therefore, it is only by leave of the Court that a party can change or alter pleadings and this is because the Court must be satisfied that the change or alteration is necessary to determine the contested issues. The amendment is allowed on such terms as deemed necessary by the Court.

We have perused the whole original defense filed in the High Court as well as the memorandum in reply filed in this Court.

With due respect to Counsel for the claimant, we do not find anything in **paragraph 2, 3, 6(a), (b), (c), (d), (e) and 7 of the response to the claim** that is different from the defense that was

filed in the High Court. There is no new matter pleaded and there is no alteration of pleadings from the original. All we have noted is that the respondent re-paragraphed and re-paraphrased what was pleaded in the High Court but it all amounted to the same pleadings. We do not accept the insinuation of the respondent that irrespective of the impact of the changes to the original pleadings, a party intending to make such minor changes has to apply for leave. Changes that only amount to correction of typing errors or reconstruction of sentences and paragraphs that do not amount to change of meaning of pleadings in our view are not amendments within rule 19 of Order 06 of CPR. We are convinced that the **Response to the memorandum of the claim** filed in this Court contains substantially the same pleadings that were filed in the High Court and the said response does not constitute any alteration or change that called for application for leave of the Court as demanded by 06 rule 9 of CPR. We therefore decline to expunge the said response from the record for failure to seek leave as prayed by Counsel.

The objection is therefore over ruled with no Orders as to costs.

Signed by:

1. Hon. Chief Judge Ruhinda Asaph Ntengye
2. Hon. Lady Justice Linda Tumusiime Mugisha

PANELISTS

1. Mr. Ebyau Fidel
2. Mr. Micheal Matovu
3. Mr. Anthony Wanyama

Dated: 19TH JANUARY, 2018