

THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
LABOUR DISPUTE MISC. APPLN No. 102/2019
ARISING FROM LDR. No. 148/2018.

MUTEBI ROBERT **APPLICANT**

VERSUS

MTN (U) LTD **RESPONDENT**

BEFORE:

- 1. THE HON. CHIEF JUDGE, ASAPH RUHINDA NTENGYE**
- 2. THE HON. JUDGE, LINDA LILLIAN TUMUSIIME MUGISHA**

PANELISTS

- 1.MS. ADRINE NAMARA**
- 2.MS. SUSAN NABIRYE**
- 3. MR. MICHEAL MATOVU**

RULING

This application is brought by chamber summons seeking leave to amend the memorandum of claim filed in this Court under LDC No. 148/2018 and for costs to abide in the main Cause. It was brought under Order 6, rules 19 and 31 and Order 52 rules 1 and 3 of the Civil Procedure Rules SI 71-1, and enabling laws of the Industrial Court.)

Background

That the applicant brought an action for redress for wrongful/or unfair termination of his employment with the respondent , where he prayed that the court awards him general and punitive damages for the resultant inconvenience, financial and reputational loss and interest thereon from the date of the said wrongful and /or unfair termination and costs of the claim.

Grounds of the application

The application is supported by an Affidavit sworn by Ms. Sophie Michelle Okumu of Kirunda and Wasige Advocates, and the gist of the application briefly is that:

That the Applicant is desirous of amending the memorandum of claim to reflect the true matters in dispute between the parties and what is proposed for amendment will not cause prejudice to the respondent, it has been filed in time and it is just and equitable that the Application is granted.

The Respondent oppose the application in its affidavit in reply deponed by Bryd Ssebuliba of C/o M/s Shonubi, Musoke & Co. Advocates, who states that; The Application for the amendment of the Memorandum of Claim is an after thought, misconceived and devoid of merit. It is highly prejudicial to the respondent and the Respondent prays it is struck out, for the following reasons:

The applicant seeks to introduce new causes of action and reliefs that did not form part of the parties respective pleadings filed in the labour office and this Court. That paragraph 12 seeks to drastically enhance the quantum of the alleged loan amount from Ugx. 110,271,115 to ugx. 129,099,720, paragraph 16 of the amendment introduces new and fresh claims to wit; mental anguish, suffering,

stress and related visual impairment arising out of the alleged wrongful/unlawful termination of the applicants contract and the entire amendment seeks to introduce new prayers and reliefs that were neither prayed for nor adjudicated upon at mediation before the labour officer or pleaded in the original memorandum of claim filed in this court, including;

- i. Claim for aggravated damages.
- ii. Claim for compensatory reliefs
- iii. Claims for compensatory order for four weeks pay
- iv. Claims for additional compensation of 3 months pay
- v. Claims for severance pay
- vi. Claims for untaken leave
- vii. Claim for compensation for loss of income from the date of unlawful termination to to the date of judgement.

According to him the amended memorandum of claim fundamentally alters the Applicants claim lodged with the labour officer and in this court and it is intended to waste courts time, having been filed after filing the memorandum of claim.

SUBMISSIONS

Both parties were made oral submissions.

In her submissions Counsel Kasabiti for the Applicant, restated the grounds of the application as the basis of the amendment and briefly that the applicant wishes to clarify the dispute before court in as far as facts relating to punitive and aggravated damages, with specific reference to the effect of the respondents conduct on the health of the Applicant as stated under paragraph 3, to provide the correct amount of the loan as cited in paragraph 11 of the current claim from

Ugx. 110,271,115 to ugx. 129,099,720, in the proposed amendment. He also seeks consequential orders under paragraph 4, 5, and 7. It was her submission that the Application was filed early enough and it does not prejudice the respondent in any way and it is based on the same cause of action. She cited **Senkubuge Denis & Anor vs Hajjati Madina Nassali & Anor Msica Appl. No.1124/2015**, for the legal proposition that the Court is under the law vested with wide discretion to allow amendment to pleadings of a party at any stage of the proceedings on such terms as may be just and such amendments shall be made as may be necessary between the parties and to avoid multiplicity of proceedings. She also cited **Mulwoza & Brothers vs Shah & Co. Ltd SCCA No. 26 of 2010**, also cited in **Ssenkubuge**(supra) that the amendment should be granted if it is in the interest of justice and to avoid a multiplicity of suits.

Mr. Agaba for the Respondents argued vehemently that the Application was an afterthought and was highly prejudicial because it raises new causes of actions which were not part of the pleadings before the labour officer and in this court under LDC No.148/2018, as stated in the affidavit in opposition already stated above. He cited no authority.

In rejoinder Counsel Kasabiti reiterated that the amendment was only intended to clarify the Applicants case on the real questions in dispute. And the test was set in **Mulwoza & Brothers**(supra) and there is no new cause of actions but clarifications. She explained further that there is no such claim as mental anguish and the parties are not bound by the outcomes of mediation, therefore that particular argument should be should disregarded by Court. She prayed that the application is allowed.

DECISION OF COURT

The Cause of action as stated in the current memorandum of claim is not disputed and it is for redress for wrongful/or unfair termination of the Applicant's employment with the respondent , where he prayed that the court awards him general and punitive damages for the resultant inconvenience, financial and reputational loss and interest thereon from the date of the said wrongful and /or unfair termination and costs of the claim.

We have considered the chamber summons the affidavits in support and in opposition to the application, both counsels submissions, the current memorandum of claim and attached proposed amended memorandum of claim and find as follows;

section 33 of the Judicature Act provides that

“The high court shall, in exercise of the jurisdiction vested by the constitution, this Act or any written law, grant absolutely or on such terms and conditions as it thinks just, all such remedies as any of the parties to a cause or matter is entitled to in respect of any legal or equitable claim properly brought before it, so that as far as possible all matters in controversy between the parties may be completely and finally determined and all multiplicity of legal proceedings concerning any of those matters avoided.”

Section 100 of the CPA provides that:

“The Court may at any time and on such terms as to costs or otherwise as it may think fit, amend any defect or error in any proceedings in a suit and all necessary amendments shall be made for the purpose of

determining the real question or issue by depending on such proceedings.”

Order 6 rule 19 of the Civil Procedure Rules states that:

“The Court may at any stage of the proceedings allow both party to 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 question in controversy between the parties.

In light of the law cited above a party may be granted leave to amend pleadings at any stage of the proceedings as long as he or she applies in time and the proposed amendment is not prejudicial to the opposite party.

In the instant case save from stating so, Counsel for the Respondent did not demonstrate how the amended memorandum would actually prejudice the Respondent and that the prejudice if any cannot be atoned for in costs.

We associate our selves with **Copper vs Smith(1884) 26 CHD 700** as cited in Ssenkubuge (supra) where Bowen L.J observedthat;

“I think it is a well established principle that the object of courts is to decide the rights of the parties and not to punish them for the mistakes they make in the conduct of their cases by deciding otherwise then in accordance with their sights... I know of no kind of error or mistake which, if not fraudulent or intended to outreach, the court ought to correct, if it can be done without injustice to the other party – courts do not exist for the sake of discipline , but for the sake of deciding matters in controversy.”

We have not found any evidence to disentitle the applicant from obtaining the amendments to the pleadings sought. The application seeks to clarify the actual dispute between the parties regarding the quantum of the loan and consequential

orders arising from his termination from employment by the Respondent, in our view the cause of action and subject matter of the suit remains substantially the same after amendment and the clarifications sought will enable court determine all matters in controversy between the parties at once and to avoid a multiplicity of suits. The application therefore it meets the criteria in Order 6 rules 19 (supra).

In the circumstances, in the interest of substantive justice as enshrined under article 126(2)(e), of the Constitution we shall allow this application. Costs shall abide in the main cause.

The applicants should file the amended memorandum of claim within 7 days from this ruling.

Delivered and signed by:

1. THE HON. CHIEF JUDGE, ASAPH RUHINDA NTENGYE

2. THE HON. JUDGE, LINDA LILLIAN TUMUSIIME MUGISHA

PANELISTS

1. MS. ADRINE NAMARA

2. MS SUSAN NABIRYE

3. MR. MICHEAL MATOVU

DATE: 21ST NOVEMBER 2019