

THE REPUBLIC OF UGANDA IN THE INDUSTRIAL COURT OF UGANDA AT KA!MPALA, MISCELLANEOUS APPLICATION NO. 140 of 2023

(Arising From Labour Dispute Reference No.78 of 2023)

ARONDA BARNABAS ::::::APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY::::::: RESPONDENT

Before:

The Hon. Mr. Justice Anthony Wabwire Musana

Panelists:

- 1. Hon. Adrine Namara,
- 2. Hon. Suzan Nabirye &
- 3. Hon. Michael Matovu.

Representation:

- 1. Ms. Charity Masiko of M/s. Enoth Mugabi & Co. Advocates for the Applicant
- 2. Ms. Rita Nabunya for the Respondent

RULING

Introduction

- [1] By summons in chamber under Order 6 Rules 19 and 31 of the Civil Procedure Rules S.I 71-1(from now CPR), the Applicant sought leave to amend his memorandum of claim to implead elaborative facts and rectify erroneously calculated claims. In the supporting affidavit sworn on the 29th of August 2023, the Applicant was deposed to the inadvertent omission of the elaborative facts, the absence of prejudice, and an intended amendment that would avoid a multiplicity of actions.
- [2] Despite directions to file a reply by 15th September 2023, the Respondent did not file an affidavit in reply. None is on record as of the date of rendering this ruling.

Analysis and decision of the Court

[4] Ms. Masiko invited us to construe the failure of the Respondent to file an affidavit in reply as a no objection to the application. This proposition is agreeable to the Court.



The law as it stands is that where a party does not file any reply, it will be taken to have accepted the averments as true. The Applicant's uncontroverted averments are accepted; for this reason, this application would succeed.

- [5] On consideration of the merits of the application, the principles governing amendment of pleadings as set out by Wamala J. in Okello Wilbert v Obel Ronald,² include attending to the real matter in controversy, not working injustice to the other side, avoiding multiplicity of proceedings, absence of malafides and an amendment ought not to be allowed where any law expressly prohibits it.³ Our perusal of the draft amended memorandum of claim demonstrates intended amendments of an elaborative fact of denial of offences at the disciplinary hearing of the 22nd of June 2022 and correcting erroneous computations of (i) UGX 406,368,000 instead of UGX 1,166,688,000 and,(ii) UGX 73, 166,329 instead of including UGX 97,682,765 to make a total of UGX 170,849,094. It is our view that these are not new facts and are intended to amplify the Applicant's cause. We find that the proposed amendments do not introduce a new cause of action or work an injustice or prejudice to the Respondent. They clarify the Claimant's claim.
- [6] In Mulowoza Brothers Ltd v N. Shah & Co Ltd,⁴ it was held that amendments should be freely allowed to determine the real question in controversy without undue regard to technicalities except if it causes an injustice that cannot be compensated by costs or introduces a new cause of action. It is our view that the Applicant meets the threshold in the present case as he does not introduce a new cause of action.
- [7] We were asked to make provision for costs. In Joseph Kalule v GIZ⁵, our persuasion was that costs in employment disputes are the exception rather than the rule, and may be awarded for misconduct. The Respondent appeared in Court and took filing directions but did not adhere to them. If it were the Respondent's inclination not to oppose the application, an express indication would have served the judicial economy by simply filing a no-contest. For this reason, we think it appropriate to grant the Applicant costs of this application.

Directions

- [7] Therefore, we make the following directions:
 - (i) The Applicant is granted leave to file an amended memorandum of claim within seven days of this ruling, that is, by the 7th of December, 2023.

¹ See Wasswa v Achen [1978] HCB 297.

² High Court Civil Miscellaneous Application No. 97 of 2020 [2021] UGCommC 9 (26 March 2021)

³ See also Sarope Petroleum Ltd v Crient Bank & 2 Ors H.C.MA 72 of 2011, Gaso Transport Ltd v Obene [1990-1994] EA 88

⁴ SCCA No. 26 of 2020

⁵ LDR 109 of 2020

- (ii) The Respondent shall file a reply within seven days from the date of service of the amended memorandum of claim.
- (iii) The Applicant shall have taxed costs of the application.

Signed in chambers at Kampala this 30 day of 00 2023.

Anthony Waby re Musana, Judge, Industrial Court

The Panelists Agree:

- 1. Hon. Adrine Namara,
- 2. Hon. Susan Nabirye &
- 3. Hon. Michael Matovu.

30th November 2023 10.00 a.m.

Appearances

1. For the Applicant:

Ms. Charity Masiko Applicant in Court.

2. For the Respondent:

Ms. Eseza Victoria Ssendege

No representative of Respondent in Court.

Court Clerk:

Mr. Samuel Mukiza.

Ms. Masiko

Matter for ruling, and we are ready to receive it.

Ms. Ssendege:

That is the position.

Court

Ruling delivered in open Court.

Anthony Wabwire Musana, Judge, Industrial Court.