

Last Updated: 25 May 2007

Kampala City Council V Value Market Services Ltd- HCT-00-CC-MA-0008-2007 [2007]
UGCommC 18 (23 February 2007)

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA
COMMERCIAL COURT DIVISION

HCT-00-CC-MA-0008-2007

Arising From HCT-00-CC-CS-0532- 2003

Kampala City Council Applicant/Defendant

Versus

Value Market Services Ltd Respondent/Plaintiff

23 February 2007

HON. MR. JUSTICE LAMECK N. MUKASA

RULING:

This is an application by Chamber Summons under Order 6 rules 19 and 31 of the Civil Procedure Rules for leave to amend the Defendant's written statement of defence.

The Application is supported by an affidavit sworn by H.S. B. Karugonjo the City Advocate wherein the grounds for the application are stated as follows:-

- (i) The Applicant/Defendant has discovered new facts which merit incorporation in the defendant's written statement of defence.
- (ii) The said new facts are that whereas the mandatory statutory notice was drawn on the Central Division, the suit was brought against Kampala City Council.
- (iii) The defendant Kampala City Council was not served with the requisite statutory notice.

In paragraphs 6 of the affidavit it is averred that under the Local Governments Act, a Division Council and City Council are separate entities with capacity to sue and be sued in their own names. Annexed to the affidavit is the intended Amended Written Statement of defence whereby the following amendments are indicated:-

1. That it will be averred that the plaintiff sued a wrong party.
2. The defendant, City Council of Kampala, was not served with the requisite Statutory Notice.

I have studied the pleadings before me and noted that the defendant in HCCS No. 532 of 2003 is stated to be City Council of Kampala. Annexed to the Affidavit in support is the Statutory Notice. The intended defendant named therein is City Council of Kampala, Central Division. It was to be served upon.

1. The Principal Assistant Town Clerk, Central Division, City of Kampala
2. The Town Clerk City Council of Kampala

In its affidavit in reply, sworn by Ben Tungwako, the Respondent's managing Director, it is averred that the statutory notice was served on both the City Council of Kampala and the City Council of Kampala City Central Division and that the statutory notice was responded to by the office of the City advocate. It is argued that the intended amendment will delay or defeat the justice of the Respondent/plaintiff case.

The general rule is that amendments to pleadings should be freely allowed at any stage of the proceedings where a Court is satisfied that the amendment will enable the real question in controversy between the parties to be adjudicated upon and no injustice would be occasioned to the opposite party and there is no injustice if the other party can be compensated by way of costs. See Order 6 rule 19 Civil Procedure Rules, ***Edward Seninde Vs Fred Luwaga (1995) IV KALR 149***.

Section 3 (3) of the Local Government Act provides:-

"(3) The Local Governments in a City shall be –

(a) The City Council

(b) The City division Councils"

And section 6 of the same Act provides:-

"Every Local government council shall be a body corporate with perpetual succession and a common seal and may sue or be sued in its corporate name."

It follows that a City Council and a City Division Council are separate corporate bodies irrespective of whether they are of the same city. The Statutory Notice in the instant suit indicated the intended defendant as "City Council of Kampala, Central Division" however the suit was filed against the Applicant "City Council of Kampala" The Statutory Notice was stated to be served on:

1. The principal Assistant Town Clerk, Central Division, City of Kampala.
2. The Town Clerk, City Council of Kampala.

There is an issue of the intended defendant; was it the Central Division, City of Kampala or City Council of Kampala or both. The amendment sought is intended to address that issue and the issue whether the defendant was served with the mandatory statutory notice. If the Respondent/Plaintiff was in doubt as to who of the two corporate bodies to proceed against rule 7 of Order 1 of the Civil Procedure Rules provided a solution. It states:-

"Where the plaintiff is in doubt as to the persons from whom he or she is entitled to obtain redress, he or she may join two or more defendants in order that the questions as to which of the defendants is liable and to what extent, may be determined as between all parties"

An amendment ought to be allowed if thereby the real substantial question can be realized between the parties and multiplicity of proceedings avoided. See ***Harji Karon Vs Monjee Regharjee (1943) 190 EACA 10***

In the circumstances of the instant case I find that the amendment sought will enable the Court to effectively and completely adjudicate upon the question of liability of the defendant/applicant and most likely result into avoidance of a multiplicity of suits and will not cause injustice to the respondent. I accordingly allow the application. An amended written statement of defence should be

filed within 7 days from the date hereof. The order as to costs in the main suit shall bind the costs of this application.

I so order .