

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT JINJA**

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MISC. APPLICATION NO. 104 OF 2014
(Arising out Civil Suit No. 19 of 2013)

FAIRLAND UNIVERSITY ::::::::::::::::::::::::::::::::::::::
10 **APPLICANT**

VERSUS

NATIONAL COUNCIL FOR
15 **HIGHER EDUCATION (NCHE) ::::::::::::::::::::::::::::::**
RESPONDENT

BEFORE: THE HON. JUSTICE GODFREY NAMUNDI

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RULING

This Application is brought under the provisions of Order 6 r.19
25 and 20 of the Civil Procedure Rules and Section 98 of the Civil
Procedure Act.

It seeks the Orders of this Court granting leave to amend the
Plaint in the head suit before the commencement of the
30 hearing.

The grounds supporting this Application in brief are:

(1) That there were developments subsequent to the filing of the original Plaintiff on which Court needs to pronounce itself or

5 (2) The intended amendments are necessary to enable Court determine the real questions in controversy between the parties to avoid duplicity of litigation.

The intended amendments are not prejudicial to the Defendant in as far as they occasion no injustice to the Defendant's case.

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The other grounds are that if the Application is not granted it will cause a miscarriage of justice and that the Court has the authority to grant the amendment of the Plaintiff.

15 The Application is supported by the Affidavit of the Applicant through its Vice-Chancellor.

It gives a brief background to the dispute. It states that the Applicant filed the head suit on 28th January 2013 and the
20 Respondent filed their defence on 8/2/2013.

The Applicant discovered that the Respondent intended to revoke the Applicant's Licence to render the head suit nugatory. The Applicant applied for and obtained Interim
25 orders to arrest the Respondent's intended action.

That instead the Respondent went ahead and revoked the Applicant's Licence the day the Application was filed and has gone ahead to hold out that the Applicant is an illegal Institution not authorized to disseminate higher education in
5 Uganda.

These new developments, the Affidavit avers have a direct bearing on the suit and need to be evaluated for a fair determination of the head suit.

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These new facts accordingly need to be consolidated and properly addressed in the present suit by way of amendment.

The Respondents through Farida Bakorwa of Lex Advocates
15 filed an Affidavit in reply and therein raise several interesting responses.

(1) That the suit the Applicant seeks to amend is Res
Judicata having been the subject of Misc. Cause
20 29/2009 in which the trial Judge faulted the Applicant for seeking to sustain its operations under the pretext of Court Orders without complying with the Law or particularly the conditions of the Provisional Licence and the statutory limitation thereof.

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(2) That the Respondent is a regulatory authority that has performed its duty within its mandate.

5 (3) That the actions the Applicant intends to include in the amended Complaint had already been made by the time the said Applicant obtained the Interim Orders.

10 (4) That the Applicant is seeking to amend by introducing a new cause of action that is even out of the statutory time limit provided for under the Law.

Amendment of pleadings is provided for under **Order 6 r.19 CPR** and it provides as follows:

15 ***“The Court may at any stage of the proceedings, allow either party to alter or 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 questions in controversy between the parties”***

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The general principle in amending pleadings is that Courts will generally allow amendments so that all matters in controversy are adjudicated upon unless the Applicant has proceeded upon
25 wrong materials or on a wrong principle. Ref: **Eastern Bakery Vrs. Castellino (1958)1 EA 461.**

A perusal of the intended amended Plaintiff reveals that the Applicant and the Respondent have had a long running dispute since 2005 when the Applicant was granted a Provisional
5 Licence to set up and operate a University. In 2007 the Respondent issued a Notice of intention to revoke the Licence for failure by the Applicant to meet standards set for Universities.

10 The Respondent issued another Notice in 2009 and the Applicant filed a matter Misc. Cause 29/2009 seeking Judicial Review of the intended intention to revoke the Provisional Licence.

15 The said Application was dismissed and among other reasons, the trial Judge held that the Respondent is fully mandated to monitor the standards for setting up Universities and Tertiary Institutions and can revoke a Provisional Licence under Section 98 (1) (b) of the Universities and Tertiary Institutions Act 2001
20 (as amended).

It is the argument for the Respondents that the matter having been dismissed on Judicial Review, the Applicant then sought to file the current head suit based on the same subject matter
25 and issues.

That by the time of filing the said suit in early 2013, the Respondent had not yet revoked the Provisional Licence and hence the subject matter of that suit at that time was different from what the Applicant intends to amend, since the events
5 the Applicant seeks to introduce into the suit had not yet occurred. Instead the Applicant's intended amendment is intended to;

(a) Change the subject matter of the suit and

(b) The Applicant's action will be a way of evading the
10 statutory requirements of the Universities and Tertiary Institutions Act 2001 (Amended) that requires a challenge to the decision of the Respondent body to be done within a specified period (30 days) which was not done. Section 129 thereof refers.

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I have looked at the intended amendment and the provisions of Law regarding amendment of pleadings.

It is my find that while all controversies should be adjudicated
20 upon hence justifying amendment to facilitate the same, the said amendment should only be allowed if;

(a) The intended facts to be introduced into the pleadings were not known to the Applicant at the filing of the
25 head suit.

(b) The intended amendment does not introduce a new subject matter or alter the subject of the head suit as to amount into a new subject matter.

5 In the instant suit, the head suit was filed in January 2013. The intended events the Applicant intends to introduce into the pleadings occurred in March of the same year.

The original head suit was based on events of 2005, 2007 and
10 2009 when the Respondent threatened to revoke the Provisional Licence of the Applicant.

The same acts/rights alleged to have been transgressed by the Respondent were adjudicated upon in the Application for
15 Judicial Review.

A reading of the Ruling in Misc. Cause 29/2009 is very instructive. Justice Mulyagonja in that decision clearly explained the role of the Respondent's mandate and also dwelt
20 on what the Respondent had required of the Applicant in the Provisional Licence.

The threats to revoke the Licence were based on the Applicant's failure to meet the requirements of the Provisional
25 Licence.

A look at the head suit and the intended amendments mentions nothing at all about whether the Applicant had complied with what the Respondent required so as to be able to claim that the Respondent violated its mandate.

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It is not therefore far-fetched to find as argued by the Respondents that the Applicant's suit is based on matters already adjudicated upon and that the intended amendments are meant to introduce a new and different subject matter altogether. Ref: **Ben Makaru t/a Cinematex Services Vrs. John Tumwebaze; Mbarara High Court MA. 125/2008.**

In conclusion, I find that the Applicant has not made out a case justifying the Application to amend the Plaint. There is really nothing that was not within the knowledge of the Applicant as at the time of filing the head suit.

I also observe that the lengthy submissions by the Applicant tend to dwell on the merits of the head suit rather than the justification to amend the pleadings.

This Application fails and is dismissed with costs to the Respondents.

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Godfrey Namundi

Judge

09/02/2015

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09/02/2015:

Applicant's counsel present

Respondent absent

5 Court: Ruling read in Court.

Godfrey Namundi

Judge

10 **09/02/2015**