

Limited before court is necessary to enable the court to effectually and completely adjudicate upon all issues and avoid a multiplicity of suits. He finally averred that the failure to make IICS Technologies Limited a party to the suit was a bonafide mistake and it is just and equitable that the plaint in the main suit be amended and M/s IICS Technologies Ltd be added as a co-defendant.

[3] The Respondent opposed the application through an affidavit in reply deposed by **Dr. Silver S. Kiyimba**, the Respondent and defendant in the main suit. He stated that the agreement herein in issue was executed between the Applicant and IICS Technologies Limited and he only signed on behalf of IICS Technologies Limited and not on his own behalf as to warrant any action being filed against him personally. He stated that he is only a director in IICS Technologies Limited and does not trade under the style and name of IICS Project. He further stated that the tax invoices were issued against the wrong party and the suit filed against a wrong and non-existent party. He averred that failure to include IICS Technologies Limited as the principal defendant was not a bonafide mistake as the Applicant had copies of the agreement. He concluded that the application had been brought in bad faith and it is in the interest of justice that it is dismissed with costs.

Representation and Hearing

[4] At the hearing, the Applicant was represented Mr. Kenneth Kajeke of M/s Kajeke, Magulu & Co. Advocates while the Respondent was represented by the firm of M/s Muganwa, Nanteza & Co. Advocates. Counsel proceeded by way of written submissions which were duly filed and have been adopted and considered by the Court in the determination of this matter.

Issue for Determination by the Court

[5] One issue is up for determination by the Court, namely; **Whether the application satisfies the conditions for amendment of pleadings and addition of a party in the main suit?**

Submissions by Counsel for the Applicant

[6] Counsel for the Applicant relied on the provisions of Order 1 rule 10(2) of the CPR to the effect that the court may at any stage of the proceedings order that a party be joined as defendant or plaintiff, whose presence before court is necessary in order to enable the court effectually and completely adjudicate upon and settle all questions involved in the suit. Counsel cited the decision in *Eastern Bakery v Castelino (1958) 1 EA 46* for the position that amendments to pleadings sought before the hearing should be freely allowed, if they can be made without injustice to the other side. He also relied on the case of *British India General Insurance Co. Ltd v G.M. Parmar and Co. (1966) 1 EA 172* to the effect that amendments ought to be made as may be necessary for the purpose of determining the real questions in controversy between the parties. Counsel submitted that since the hearing of the main suit has not started, the amendment and addition of IICS Technologies Limited shall not cause an injustice to the defendants but shall enable the court to resolve all the issues in controversy. Counsel prayed that the application be granted by the Court.

Submissions by Counsel for the Respondent

[7] In reply, it was submitted by Counsel for the Respondent that the amendment sought by the Applicant cannot be maintained in law on account that the Applicant sued a wrong party. Counsel cited the case of *Muwanguzi & Anor v Uganda Wood Ball Federation HCMA No. 33 of 2021* to the effect that suing a wrong party cannot be cured by an amendment. On one hand, Counsel submitted that IICS Technologies Limited is a corporate body and thus

separate legal entity and the Respondent only acted as its director. As such, a suit brought against the Applicant was null and void having been brought against a non-existent party. On the other hand, Counsel for the Respondent argued that the proposed party to be added as a co-defendant (IICS Technologies Limited) is not a legally registered company with capacity to sue and be sued and an order to add the said entity to the suit would be of no legal consequence. Counsel stated that IICS Technologies is only a trade name and the proper party is as indicated in the WSD.

Determination by the Court

[8] The relevant provision under Order 1 rule 10(2) provides that the court *“may at any stage of the proceedings either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit, be added”*.

[9] It is the position of the law that in an application for joining a party to a suit, the applicant has to satisfy the court that the person sought to be joined as a party has high interest in the case or that the orders sought in the main suit would directly or legally affect the party sought to be added and that it is desirable to have that person joined to avoid a multiplicity of suits, or that the defendant could not effectually set up a desired defence unless that person was joined or unless the order to be made would bind that person. See: *Kololo Curing Co. Ltd v West Mengo Co-operative Union [1980] HCB 60*; *Lea Associates Limited v Bunga Hill House Ltd HCMA No. 348 of 2008* and *Samson Sempasa v P. K. Sengendo HCMA No. 577 of 2013*.

[10] On the case before me, it is claimed by the Applicant that upon conclusion of the agreement, the Applicant did not retain a copy of the same and during implementation of the same, the Applicant dealt with the person of Dr. Silver Kiyimba, the current Respondent/Defendant. The tax invoices, subject of the contractual transaction, were also issued in the name of the Respondent. The Applicant was unaware that IICS Technologies was a corporate entity. Although these averments by the Applicant are disputed by the Respondent, the Respondent led no evidence to the contrary. Even then, and more importantly, the Respondent appears to be confused about the legal personality of the entity that is at times referred to as “IICS Technologies” and elsewhere as “IICS Technologies Limited”.

[11] The confusion I allude to is first reflected in the agreement herein in issue dated 14th November 2018 (Annexure A to the affidavit in support of the application). While in the recital the “Hirer” is referred to as “IICS Technologies”, at the bottom, Dr. Silver Kiyimba signs for and on behalf of “IICS Technologies Ltd”. Secondly, in the submissions, the Respondent’s advocate also makes contradicting submissions. While in one breath it is submitted that the entity is a corporate body separate from the Respondent, Counsel in another breath submits that the entity is not a legally registered company and is only a trade name, incapable of being sued. This is testimony to the possibility that the Respondent chose to remain unclear about the legal personality of the entity that dealt with the Applicant. In light of such uncertainty, the Applicant cannot be blamed for not being certain as to who the right defendant is. This uncertainty lends credence to the Applicant’s evidence that he was under the impression that IICS Technologies was simply a project ran by the Respondent; thus suing the Respondent T/A IICS Technologies Project.

[12] That being the case, the Applicant is right in his view of bringing the action against both defendants in absence of lack of unequivocal evidence as to the proper identity of the business entity in issue. It is, therefore, not true that the suit was brought against a wrong or non-existent party. The Respondent was party to the transaction and since the identity of the entity he purported to represent is uncertain, a cause of action exists against him unless and until he proves otherwise. On the other hand, since the entity in issue at times passes as a legal entity, the persons dealing with it can maintain an action against it unless and until it is proved otherwise in evidence.

[13] In the circumstances, I find this a fit and proper case for allowing an amendment to add a defendant to the suit in accordance with the provisions under Order 1 rule 10(2) of the CPR. The application therefore succeeds and is allowed with orders that;

- a) The Applicant is allowed to amend the plaint in Civil Suit No. 014 of 2021 to add IICS Technologies Ltd as a co-defendant to the suit.
- b) The amended pleadings shall be filed within 15 days from the date of this order.
- c) The costs of this application shall be in the cause.

It is so ordered.

Dated, signed and delivered by email this 12th day of April, 2024.



Boniface Wamala
JUDGE