

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**LAND DIVISION**  
**MISCELLANEOUS APPLICATION NO. 468 OF 2016**  
***ARISING OUT OF CIVIL SUIT NO. 679 OF 2014***

**1. NAMUGENYI MARGRATE NTABAZI**  
**2. ROSEMARY NAKAFU .....PLAINTIFFS**  
**VERSUS**

**1. NAMBI STELLA & 4 ORS .....DEFENDANTS**

**BEFORE: HON. MR. JUSTICE GODFREY NAMUNDI**

**RULING**

This application is brought under **Section 98** of the **Civil Procedure Act**, and **Order 6 Rules 19** and **31** of the **Civil Procedure Rules**. The Applicant seeks:

- 1) Leave to amend her written Statement of Defence in the head suit.
- 2) Costs of the Application.

The grounds supporting the application are that:

- 1) The Applicant has proof that she incurred a lot of expenses from her own pockets in providing g education and other expenses in regard to the general welfare of the Respondents, which she did not plead.

- 2) The Applicant wishes to recover those expenses and thus needs to amend the written statement of Defence to include the counter claim.
- 3) It is necessary to amend so as to enable court to adjudicate upon all matters involved in the suit.

The application is supported by the Applicant's affidavit which largely reiterates the grounds in the Chamber Summons. The draft Written statement of Defence attached to the application contains the intended counter claim that contains a claim for funds expended on educating and maintaining the 3<sup>rd</sup> and 4<sup>th</sup> Defendants/Respondents.

It also introduces a cause of action based on fraud allegedly perpetrated by the 1<sup>st</sup> Counter/Defendant/Respondent. I also note that the said claimed expenses are not laid out or particularised in the counter claim. The 3<sup>rd</sup> Respondent, **Sam Nsumba** filed an affidavit in reply in which he disputes the application as not being sustainable in law and that the intended counter claim introduces a new cause of action that is not related to the Head Suit - 679/2014.

The law regarding amendments of pleadings is laid out in **Order 6** of the **Civil Procedure Rules**. The general Principal is that amendment enables parties to alter their pleadings so as to ensure that Litigation is conducted on the basis of the real issues in contention between the parties.

Under **Order 6 Rule 19 CPR**, the court may at any stage of the pleadings, allow either party to amend in such manner and on such terms as may be just and such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties. In **Gas Transport Services Ltd Vs Martin Adala Obene SCCA 4/1994**, the Court laid out the following considerations to be taken into account by a court before allowing amendment;

- a) The amendment must not work an injustice to the other side.
- b) Multiplicity of proceedings should be avoided as far as possible and amendments which avoid multiplicity should be allowed.
- c) An application which is made malafide should not be granted.
- d) No amendment should be allowed where it is expressly or impliedly prohibited by the law.

The other consideration is that the amendment sought to be made should not change the cause of action substantially. Ref: **Eastern Bakery Vs Castelino (1958) EZ 46**. In **Lubowa Gyaliira & Ors Vs Makerere University HCMA 471 - 2009**, It was held that a court will not exercise its discretion to allow an amendment which constitutes a distinctive cause of action for another or to change by means of amendment, the subject matter of the suit.

It has been submitted for the Applicant in the instant application that on the authority of **Odgers' Principles of Pleading and practice 22<sup>nd</sup> Edition at page 203**, it is possible to introduce a new cause of action by way of

amendment and introduction of a counter-claim. I have had occasion to peruse the authority cited. It does not do away with the principles laid out in **Gasco Transporters (Supra)** when court exercises its discretion to allow an amendment. Further, the counterclaim apart from claiming for funds expended on the 3<sup>rd</sup> and 4<sup>th</sup> Respondents also introduces a completely different claim, based on fraud, which has not featured at all in the plaint or the Defence in the Head Suit.

As pointed out earlier, the particulars of those claims for expenses are neither particularised in the counter claim or are they supported by any annexures. To me, such claims amount to a claim for special damages. These require strict proof and must be particularised so that they can be so proved. This has not been done.

The other aspect to this application is displayed in the earlier Written Statement of Defence in the Head Suit. In the joint written statement of defence filed on 22/12/2014, under paragraph 3 thereof, the Defendants claim the Plaintiff's suit is bad in law and does not disclose a cause of action against the Defendants.

I now fail to see the logic or justification for a counter claim that is for all intents and purposes, based on a plaint/claim that is bad in law. For example various aspects are brought to the forefront e.g, limitation of the intended suit/counterclaim by operation of time. This alone would defeat the claim as it would be prohibited by statute {**Gasco Transport Services - (Supra)**}.

The other aspect is the locus of the intended counter claimant/Plaintiff. The intended counterclaim does not show in what capacity/locus the counter claimant would be instituting the suit. She does not show that she was guardian of Respondents 3 and 4 (with a relevant Court Order) or Administrator of the Estate over the property she sold belonging to the said Respondents.

In conclusion, I find no merits in the application for amendment of pleadings. For all intents and purposes, to is brought malafide intended to defeat the Plaintiff/Respondents claims. It is dismissed with costs.

Dated at Kampala this 3rd day of November, 2016.

**GODFREY NAMUNDI**  
**JUDGE.**

**3/11/16**

J.M Musisi for Applicant

Bogezi Ronald for Respondents

Parties present (Respondent absent)

**Court:** Ruling delivered.

**GODFREY NAMUNDI**  
**JUDGE**  
**3/11/16**