

Respondent/Plaintiff used to enjoy a friendship that resulted in the Applicants purchase of a plot from the Respondent's father.

The above assertions are contained in the proposed amended WSD
30 and counter claim. It appears the prayers in the Counter claim are based on the premise that the Applicant was convicted and sentenced by a court of law at the instance of the Respondent/Plaintiff. There is no claim that the said conviction and sentence were set aside by an Appellate Court. It would also appear
35 that the said conviction and sentence arose out of the same land transactions that are wholly or part of the subject of this Civil Suit; But back to the above latter. The Respondent filed a reply to the application that has been objected to as having been filed out of time without leave of court. The same was filed over one month
40 after being served with the application.

This clearly contravened the provisions regarding filing of pleadings. The Respondent should have either sought consent of the opposite counsel to file late or sought leave of court. This was not done. The said affidavit in reply is accordingly struck out. Ref: **Orient Bank Ltd**
45 **Vs Avi Enterprises Ltd HCCA 2/20113.**

This leaves the application uncontested but even in uncontested proceeding, it is upon the Applicant to establish or make out a case, justifying the remedies he/she seeks from court.

Under **Order 6 Rule 19 CPR**, the court has discretion to allow
50 amendment of pleadings at any time. This could be for reasons
ranging from discovery of new information to realisation of errors in
the existing pleadings. The basic premise for allowing the
amendment is that the said amendment will not prejudice the other
party or that the other party can be compensated by way of costs.

55 **Ref Matovu Store Ltd & Anor Vs James Mbabazi & Anor 1993 HCB**

3. The Courts have laid out principles to govern the grant of leave to
amend. They are:

- The intended amendment should not cause injustice to the other
side.
- 60 - Multiplicity of proceedings should be avoided and amendments
that avoid such multiplicity should be allowed.
- The application should not be made **mala fide**.
- An amendment expressly prohibited by law should not be
allowed.

65 **Ref: Gaso Transport Services Ltd Vs Martin Adala Obene SCCA**

4/1994. The other consideration was laid down in **Edward Kabugo
Sentongo Vs Bank of Uganda HCMA 2003/ 2007**, where it was held
that an amendment that substantially changes the cause of action
into a different one or that deprives the other party of an accrued
70 right will not be allowed.

A look at the subsisting statement of Defence and the proposed amendment reveals that:

- 1) There are no new facts that have been discovered after the defence was filed. Instead the proposed amendments are based on old information that was within the Applicant's knowledge. For example the fact that both parties were close friends prior to the disputes. The same said facts do not amount to anything new or that they were mistakenly left out of the pleadings.
- 2) A look at the intended counter claim is even more intriguing.
 - a) firstly, it was within the Applicant's knowledge that he was prosecuted and convicted.
 - b) Secondly the Applicant seems to imply that having been prosecuted and convicted gives him a cause of action against the Respondent.
 - c) There is no evidence that he said conviction was ever set aside by an Appellant court.
- 3) Allowing the counter claim would be introducing a new cause of action in the proceedings that has no foundation in the subsisting proceedings.
- 4) The intended counter claim to me reeks of an attempt to similes or short change the criminal proceedings by seeking remedies that would in effect be inter fearing with a lawful conviction and sentence.

I find that the application does not satisfy the requirements of Order
95 6 Rule 19 CPR or the Principles governing amendments. The
application is dismissed for lack of merits and it is ordered that the
hearing of the basis of the existing pleadings.

Each party will meet their own costs.

Dated this 19th day of October, 2016.

100

GODFREY NAMUNDI

JUDGE

Delivered in the presence of:

105 Bakidde for Respondents

Applicant present.

Counsel for Applicant absent.

Court: Ruling Delivered. Main Suit to be heard on 20/2/2017

110

GODFREY NAMUNDI

JUDGE

19/10/2016