

inadvertently omitted to disclose some material facts that ought to have been part of his pleadings, namely that;

- (i) Upon full payment of the purchase price, the Applicant employed caretakers in the names of Oloya Walter and Oponya David who, since 2002, resided on the suit land to protect the Applicant's interest therein until their eviction on 30th October 2017.
 - (ii) On 5th December 2016, the Applicant had lodged a caveat on the suit land in order to protect his interest in the said property.
 - (iii) In September 2017, the Applicant's advocates discovered a Notice to Caveator of an application to remove the Caveat which had been filed. The Notice was dated 30th March 2017.
 - (iv) The Applicant went ahead and had the electricity meter changed to his name and has been paying the electricity bills since then.
 - (v) When the subsequent purchaser of the land, one Ochola Okot, was making payments for the suit land, he implored and kept reminding the Respondent/Defendant to pay to the Applicant his portion of the purchase price.
- c) It is necessary to amend the plaint in order to determine the real questions in dispute between the parties. The proposed amendment shall not prejudice the Respondent in any way and it is in the interest of justice that the application is granted.

The Respondent opposed the application through an affidavit in reply deposed to by himself, in which he stated as follows:

- a) The Respondent has been advised by his advocates that the application by the Applicant is an afterthought, misconceived, frivolous, vexatious, bad in law and an abuse of the court process which ought to be struck off or dismissed with costs.
- b) The Applicant's affidavit in support contains distorted facts and falsehoods.

- c) The application is intended to deprive the Respondent of his defence to the effect that the Applicant's suit is time barred. The Respondent had indicated in his written statement of defence (WSD) that he would raise a preliminary objection to that effect. The parties filed a joint scheduling memorandum in which the issue of time limitation was agreed to as one of the issues for determination by the court. The Applicant had made an earlier attempt to amend his plaint without leave, which plaint was objected to by the Respondent and the same was struck out by the court.
- d) At all times, the Respondent was the one in possession of the suit land through his caretaker, a one Ogoola, and not the Applicant's caretaker as alleged. When the Respondent learnt of the unlawful trespass by the Applicant's caretaker, he instructed his lawyers to cause the eviction of the said trespasser from the land.
- e) The Applicant's allegations of paying for electricity bills are denied and the Applicant is not entitled to any of the remedies sought in the plaint. The Respondent will be prejudiced by the amendment as it is intended to deprive him of his defence of time limitation.
- f) It is in the interest of justice that the application is denied.

The Applicant filed an affidavit in rejoinder in which he stated as follows:

- a) The issues raised in the affidavit in reply can only be resolved upon hearing of the main suit on the merits.
- b) The amendment is intended to enable the court to determine the real issues in controversy in the main suit between both parties.
- c) The application is brought in good faith and it is in the interest of justice that it is allowed.

Representation and Hearing

At the hearing, the Applicant was represented by Mr. Onder Oscar while the Respondent was represented by Mr. Osongol Sam. It was agreed that the

hearing proceeds by way of written submissions and the Counsel were given schedules to file the same. The Applicant's submissions were to be filed and served by 02/12/2020; the Respondent's submissions by 09/12/2020; and a rejoinder by 16/12/2020. However, to the date of writing this Ruling, only the Applicant's submissions are on record, filed on 11/12/2020. There is no indication whether they were served onto the Respondent. There is no complaint by the Respondent that they were not served with the submissions as directed by the Court. Although the Applicant's submissions were filed 09 days later, that cannot be an excuse for the Respondent not to file his submissions at all. I would have understood if the Respondent's submissions came in later than directed on account of having been served late. Therefore, I have deemed it that the Respondent chose not to file any submissions and I have proceeded to write the ruling only relying on their pleadings for their part of the case.

Issues for determination by the Court

Only one issue is up for determination by the Court, namely, **whether the Applicant has shown grounds entitling him to be granted leave to amend his plaint in the main suit.**

Resolution by the Court

Order 6 Rule 19 of the CPR empowers the Court to grant leave to a party to amend their pleadings at any stage of the proceedings. It provides as follows:

“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.”

The principles that have been recognized by the courts as governing the exercise of discretion to allow or disallow amendment of pleadings have been summarized in a number of decided cases and they boil down to the following:

- a) Amendments are allowed by the courts so that the real question in controversy between the parties is determined and justice is administered without undue regard to technicalities.
- b) An amendment should not work an injustice to the other side. An injury that can be compensated by an award of damages is not treated as an injustice.
- c) Multiplicity of proceedings should be avoided as far as possible and all amendments which avoid such multiplicity should be allowed.
- d) An application that is made malafide should not be granted.
- e) No amendments should be allowed where it is expressly or impliedly prohibited by any law.
- f) The court shall not exercise its discretion to allow an amendment which has the effect of substituting one distinctive cause of action for another.

See: *Gasu Transport Services (Bus) Ltd vs Obene (1990-1994) EA 88; Mulwooza & Brothers Ltd vs Shah & Co. Ltd, SCCA No. 26 of 2010; and Nicholas Serunkuma Ssewagudde & 2 Others vs Namasole Namusoke Namatovu Veronica HCMA No. 1307 of 2016.*

Counsel for the Applicant in his submissions was alive to the above principles as set out and implored the Court to find that the Applicant has satisfied the grounds for grant of leave to amend his pleadings.

Upon consideration of the averments in the affidavits filed by both parties and the submissions of the Applicant, I find that this application is not expressly or impliedly barred by any law. Neither is it crafted to substitute one distinct cause of action for another. The application is therefore properly before the

court and the court is in position to exercise its discretion, upon the grounds raised by the Applicant, to decide whether to allow or disallow the amendment sought for.

The Applicant has shown by affidavit that when instructing his advocates, he left out some facts that he did not know were material to the just determination of his case. It was at the time of preparation for the hearing of the case that it was realized that the said material facts had been omitted and ought to be included in the Applicant's pleadings in the main suit; thus this application. The Applicant sets out these facts in paragraph 5 of the affidavit in support of the application.

In response, the Respondent stated that the intended amendment by the Applicant was bad in law as it was intended to deprive the Respondent of his defence to the effect that the suit by the Applicant is time barred. As such, the amendment was not brought in good faith and, if allowed, would be prejudicial to the Respondent.

I need to point out that this claim by the Respondent cannot constitute a sufficient reason to deny an amendment. This is because, the facts introduced by the Applicant will have to be supported by evidence and strictly proved by the Applicant. Once the facts are admissible and material to the case, the real issue is whether they are true or false. This issue cannot be determined in any other way other than through evidence adduced at the trial. In such circumstances, a party would therefore be allowed to introduce such facts and then be put to strict proof of the said facts. I do not see any malafide in such circumstances. I also do not find any prejudice likely to be suffered by the Respondent. If the Applicant cannot establish the facts at trial, the defence of limitation remains available to the Respondent up to the time of final determination of the case.

In the circumstances therefore, I am satisfied that this application has not been brought in bad faith and has no potential of working an injustice or prejudice against the Respondent. I am further satisfied that grant of the amendment will enable the court to fully and finally determine all the questions in controversy between the parties thereby avoiding a multiplicity of actions.

Decision of the Court

The Applicant has therefore satisfied the Court that he is entitled to be granted leave to amend his plaint in the main suit. The application therefore succeeds and is accordingly allowed with orders that:

1. The Applicant is granted leave to amend his pleadings in Civil Suit No. 157 of 2017.
2. The Applicant shall file the amended plaint within 15 days from the date of delivery of this Ruling.
3. The costs of this application shall abide the outcome of the main suit.

It is so ordered.

Dated, Signed and Delivered by email this 26th day of March 2021.



Boniface Wamala
JUDGE