

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(LAND DIVISION)
MISC. APPLICATION NO. 1301 OF 2020

(ARISING FROM CIVIL SUIT NO. 555 OF 2015)

1. THE KABAKA OF BUGANDA
2. BUGANDA ROYAL INSTITUTE OF BUSINESS AND
TECHNICAL SERVICE:::APPLICANTS

VERSUS

MUGEMA CHARLES:::RESPONDENT

Before:**HON. MR. JUSTICE HENRY I. KAWESA**

RULING:

The application is brought under Section 98 of the Civil Procedure Act and o.6 r19 & 31 of the Civil Procedure Rules and O.51 r6 of the Civil Procedure Rules for orders that;

Leave be granted to the Applicants to amend the written statement of defence date 15th December 2015.

The grounds are supported by the affidavit of Wamala Anthony. There is an affidavit in rejoinder filed by Wamala Anthony to the Respondents' affidavit in reply.

The parties' lawyers filed submissions. The Applicants in submissions, reflect the law applicable under O.5 r19 & 31 of the Civil Procedure Rules;

“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”

He also referred to the case law in **Gasu Transport Services (Bus) Ltd versus Martin Adala Obene; SCCA No. 04/1994** that;

- a) *The amendment should not occasion injustice to the opposite party,*
- b) *Amendment should be granted if it is in the interest justice to avoid multiparty of suits,*
- c) *The application should be in good faith,*
- d) *No amendment should be allowed if it's prohibited by any law.*

Mulwooza & Brothers versus Shah; SCCA NO. 26 of 2010 (unreported), Court held that;

“The test is whether the proposed amendment introduces a distinct, new cause of action instead of the original or whether and in what way it would prejudice the rights of the Respondent if it was allowed”.

The submissions major crux is that the application seeks for leave to amend the written statement of defence. The intended amended written statement of defence lays out detailed and clear facts of what was partially stated in the written statement of defence dated 16th December 2015, without further and better particulars.

Counsel argues in 3.6 of his submissions that the details being proposed, relate to matters specifically pleaded in the plaint in relation to ownership of **land comprised in LRV 456 folio 1 Kyadondo Block 8 Plot 117, 1118 and 1119, land at Kakeeka Mengo.**

In response to the submissions, the Respondents referred to the earlier matters between the parties under HCMA NO.1078/2015, and HCMA NO.1075/2015 under 1.6, the Respondents' counsel refers to the joint scheduling memorandum to argue that the amendment is malafide. Under 4.4 of the submissions, he refers to the lack of instructions by **Ortus Advocates; and refers to Regulation 2(1) of the Advocates (Professional Conduct) Regulations which prohibits Advocates on acting for any person without 6 instructions.**

Counsel referred to the case of *Eastern Bakery versus Castelino (1958) EA 451*, cited in *Huawei Technologies (U) Ltd versus Evepeak Consults & Technical Services Ltd, HCMA No.189 of 2011.*

where the Court of Appeal for East Africa ruled that;

“The principles that apply to the amendment of plaints are similar to those facts, apply to the amendments of statements of defence. He reiterated the principles applicable”.

In their submissions, the Respondent argued under 6.3.4 – that the proposed amendments would change and introduce a completely new set of defence to the prejudice of the Respondent, under paragraph 6.4.2 in the proposed amendment, denies the allegation that plot 1088 is intact and still exists.

Counsel argues that at scheduling, this position was agreed, but now want to change the position.

They argued that the proposed amendment is malafide.

The Respondent prayed in essence that the application is malafide, a fishing expedition and should be dismissed with costs. In rejoinder, the Applicant denied the above and reiterated their plea.

I have gone through the proposed written statement of defence and I do find that;

The proposed amendments is totally a new set of facts and evidence of their position. There is merit in the Respondent's arguments that a reading of the proposed amendment shows that there is a shift in the position of facts as pleaded in the original written statement of defence and the new proposed written statement of defence.

The proposed amendment introduces new issues; that is as argued in 6.3.2, 6.3.3 and 6.3.4. These arguments are very critical and require this Court to go through the original files and internalise the issues being raised by both parties, which shows that there is a major shift.

The proposed written statement of defence is full of details, explanations which in my view, have totally shifted the position of defence as it was at the time of filing on 16th December 2015; and the proposed position. (See paragraphs 3.1 – 4.28; which all attempts to amend a

defence by introduction of new information which is contested by the Respondent. The challenge with this type of proposed amendment of defence which brings up new facts, is how does the plaintiff respond to this information?

It may necessitate amending the plaint so that it captures the said new facts, but this is not allowable. It amounts to introducing a whole new cause of action which has been determined as unlawful in cases like **Mulwooza & Brothers versus Shah; SCCA NO. 26 of 2010** that;

“The test is whether the proposed amendment introduces a distinct, new cause of action instead of the original or whether and in what way it would prejudice the rights of the Respondent if it was allowed”.

I have found that this amendment prejudices the Respondent, in that it affects the facts pleaded in the plaint by proposing new matters which could only be responded to by a further amendment of the paint which the Respondent is not inclined to do.

The rest of the arguments by the Applicants can not sufficiently answer the above legal hiccup. I do agree with the Respondent in their submissions that this application does not merit the standard of law for grant of leave to amend the written statement of defence with costs to the Respondents.

I so order.

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Henry I. Kawesa

JUDGE

29/01/2021.

29/01/2021:

Amos Matsiko and Gonzaga Ssekandi for 1st and 2nd Applicants.

Representation of Applicant is absent.

Namandi Assumpta for the Respondent.

Respondent absent.

Court Ruling delivered.

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Henry I. Kawesa

JUDGE

29/01/2021.