

THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL CORT OF UGANDAN
MISC. APPLICATION NO.127/2021
ARISING FROM LABOUR REFERENCE NO.168 OF 2014
(ALSO ARISING FROM KAMPALA HIGHCOURT CIVIL SUIT NO. 40/2013)

ASP MUGWERI RICHARD & 37 OTHERS ::::::::::::::: APPLICANTS/CLAIMANTS

VERSUS

ATTORNEY GENERAL::::::::::::::::::::::::::: RESPONDENT

BEFORE

1. Hon. Head Judge Ruhinda Asaph Ntengye

PANELISTS

1. Ms Kagoye Robinah
2. Mr. Misimbi Jimmy
3. Mr. Can Lapenga Amos

RULING

Introduction

This application is brought by way of Chamber Summons under *Order 6 Rules 19 & 31 of the Civil Procedure Rules (CPR) and Section 98 of the Civil Procedure Act (CPA)* seeking orders that:

1. The Applicant be given leave to amend their claim to include facts, all their claims and attachments.
2. Costs of the application be provided for.

The application is supported by an affidavit sworn by Batuwe Alfred, one of the Applicants who depones for himself and others. The application and the affidavit in support set out the following grounds:

- a. The Applicants are former employees of the respondent in the position of prison officers from 1993 until 2008 when they were terminated.
- b. Being dissatisfied with the decision of the respondent, the applicants instructed their former lawyers M/s Katuntu &Co. Advocates to institute Civil Suit No.40/2013 for unlawful termination against the respondent which was filed in the High Court of Uganda at Kampala.
- c. The said matter was eventually transferred to this Honourable court on matters of jurisdiction.
- d. The applicants instructed M/s Asire &Co. Advocates as their new advocates who upon perusal of the applicant file has realized that the previous lawyers had not included certain claims, attachments and therefore the need for the amendment of the applicant's claim to constitute the entire claims as entitled.
- e. The Lawyers M/s Asire &Co. Advocates also advised the applicants that this Honourable Court has discretion to grant leave to enable them amend their claims to attach appointment letters, Minutes by the prison Council resolving to terminate them and add and itemize their claims as per individual claim since they had worked for different years.
- f. That the errors on their claim (pleadings) were by their previous lawyers and therefore the claimants should not be condemned for the actions of their previous lawyers not detailing the applicants' claims.
- g. This Honourable Court has discretion to grant leave for the amendment

The Respondent opposed the application by way of a witness statement deposed by Clare Kukunda who stated that;

- a. The application is misconceived, frivolous, and vexatious and abuse of court process and does not merit the orders sought and the respondents shall from the onset raise preliminary objections.
- b. It was the second time the applicants were filing for amendment of the plaint.
- c. The application is illegal and bad at law as it introduces new causes of action and different Parties.

The Applicant filed an affidavit in rejoinder in which they stated that they were not introducing any new cause of action nor are they different parties.

Representation and Hearing

At the hearing, the Applicant was represented by Ms Apolot Skolastica while the Respondent was represented by Mr. Ojambo Rukyakyi. At the time of the hearing, the Respondent had not filed a reply and the respondent's counsel prayed to court to be given leave to file a reply and submissions given that he was not the counsel in personal conduct of the case. Court gave schedules with in which to file the reply to the application, affidavit in rejoinder and submissions. The affidavit in reply was to be filed by 20/10/2021 and the affidavit in rejoinder by 27/10/2021. Whereas, the applicant's submissions were to be filed and served by 29/10/2021; the Respondent's submissions by 2/11/2021; and a rejoinder by 12/11/2021. However, to the date of writing this Ruling, only the Applicant's submissions are on record, filed on 29th/10/2021. There is no indication whether they were served onto the Respondent. There is also no complaint by the Respondent that they were not served with the submissions as directed by the Court. Therefore, court deems it that the Respondent chose not to file any submissions.

Court also notes with concern that the Respondent chose to reply to the application by way of a witness statement, a procedure that is irregular and improper under the Civil Procedure Rules.

The Respondent's witness statement therefore does not amount to opposition of the application. In light of the foregoing therefore, court proceeded to write a ruling only relying on the applicant's pleadings and submissions.

Submissions

Counsel for the applicant framed three issues for determination by the Court namely;

1. Whether grant of leave to amend is justified in the circumstances
2. Whether the application is illegal and bad in law as it introduces different parties
3. Whether the application is illegal and bad in law as it introduces new causes of action.

On the first issue, Counsel for the applicant relied on order 6 rule 19 of the Civil Procedure rules that grants Court power at any stage of the proceedings to allow either party to alter or amend his or her pleadings in such manner and on such terms as may be just and that all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties. Counsel further cited **section 98 of the Civil Procedure Act** that gives this Court inherent power to grant orders to ensure the ends of justice are met. It was also the submission of Counsel for the applicant that order 1 rule 10(2) of the Civil Procedure Rules gave court power to allow such an application for leave to amend a plaint so that court can effectually adjudicate upon questions involved in a suit.

Relying on **Eastern Bakery Vs Castelino (1958) E.a 451** as cited in **Huawet Technologies (U)Ltd Vs Evepeak Consultants & Technical Services Ltd**, Counsel for the applicant submitted that the cardinal principles governing the grant of leave to amend namely; (1) the terms on which the amendment is allowed must be just and (2) all just amendment ought to be allowed to enable the court determine the real question in controversy in the dispute not just any question that arise in suit.

In relation to the above principles, Counsel for the applicant submitted that the applicants in paragraph 3, 5, 6,7 of their affidavit in support of the application has stated that all their facts, claim and attachments were not pleaded and attached in the Labour reference No.168/2014 and they were ignorant about the un-pleaded facts, claims and attachments and had mistakenly believed that their former lawyers had pleaded all their facts, claims and attachments. Counsel

therefore argued that if the amendment is disallowed, it will necessitate the applicants to file another suit to claim balance of unpleaded claims hence multiplicity of suits which would have been cured by this amendment.

Counsel for the applicant submitted that no prejudice shall be caused to the respondent because the application has been brought without delay and it is intended to prevent multiplicity of suits to enable this court determine the controversy between the parties. Counsel further submitted that the amendment will not cause any injustice to the respondent since the proceeding in respect to Labour dispute 168/2014 have not advanced to any stage.

On the second issue, Counsel for the applicant does not introduce new parties whereas on the third issue, Counsel submitted that the intended amendment does not introduce a new cause of action but rather expounds a cause of action on unlawful termination.

Decision of Court

We have perused though the Chamber summons together with the affidavit in support of the summons and the attached intended amended memorandum of claim. As earlier stated, this court disregarded the respondent's witness statement as an opposition to the application for the reasons earlier stated and since respondent did not file their submissions, this court only perused the submissions of counsel for the applicant. All the three issues have been merged and resolved as one.

We agree with Counsel for the applicant that *Order 6 Rule 19 of the CPR* empowers 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 zero 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. The amendment should not occasion injustice to the opposite party.
- c. It should be granted if it is in the interests of justice and to avoid multiplicity of suits
- d. The application should be made in good faith.
- 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: *Molowoza Brothers Ltd Vs N. Shah & Co. Ltd* SCCA No.26 of 2010, *Gasu Transport Services (Bus) Ltd vs Obene (1990-1994)* EA 88, *Eastern Bakery Vs Castelinov(1958)* E.A 451, *Nicholas Serunkuma Ssewagudde & 2 Others vs Namasole Namasoke Namatovu Veronica* HCMA No. 1307 of 2016.

Counsel for the Applicant in her 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 claim.

Upon consideration of the averments in the affidavit of the applicant filed on behalf of himself and others, Court finds that this application is not expressly or impliedly barred by any law. Court has also perused through the attached intended memorandum of claim and finds that the same does not substitute one distinct cause of action for another or introduce any new cause of action. 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 Applicants have shown by affidavit that their former lawyers left out some facts, claims and attachments which were material to the just determination of their case. It was until they instructed their new lawyers M/s Asire & Co. Advocates that they were advised that some facts,

claims and attachments 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 paragraphs 3, 5, 6 & 7 of the affidavit in support of the application. Based on this, Court finds that the ammendment will enable court to fully and finally determine all the questions in controversy thereby avoiding a multiplicity of suits.

Court is further convinced that the application has not been brought in bad faith and has no potential of occasioning an injustice to the Respondent

The Applicant has therefore satisfied the Court that they are entitled to be granted leave to amend their memorandum of claim in the main suit. The application therefore succeeds and is accordingly allowed with orders that:

1. The Applicant be given leave to amend their claim to include facts, all their claims and attachments
2. The Applicant shall file the amended plaint within 14 days from the date of delivery of this Ruling.
3. The costs of this application shall abide the outcome of the main suit.

Delivered & Signed by:

1. Hon. Head Judge Ruhinda Asaph Ntengye

PANELISTS

1. Ms Kagoye Robinah
2. Mr. Misimbi Jimmy
3. Mr. Can Lapenga Amos.....

Dated 19/11/2021