

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL COURT)
MISCELLANEOUS APPLICATION NO.0679 OF 2023
(ARISING FROM CIVIL SUIT NO.386 OF 2018)
PHOENIX OF UGANDA ASSURANCE CO.LTD:.....:APPLICANT
VERSUS
1. KUTI INVESTMENTS LTD]
2. KCB BANK UGANDA LTD]:.....:RESPONDENTS

Before Hon. Lady Justice Patricia Kahigi Asiimwe

Ruling

Introduction

1. This Application was filed by way of Chamber Summons under Order 6 Rules 19 and 31 of the Civil Procedure Rules SI 71-1 and Section 98 of the Civil Procedure Act Cap 71. The Applicant seeks leave to amend its Written Statement of Defence and to file a counterclaim in the Civil Suit.
2. The background to this Application is the 1st Respondent got a loan from the 2nd Respondent and secured it with motor vehicle Registration Number UAW 826G. The vehicle was comprehensively insured by the Applicant. On 17th May 2018, the 2nd Respondent instituted a summary suit against the 1st Respondent for recovery of outstanding loan amounts of UGX. 184,101,997. The 1st Respondent filed a defence and a counterclaim against the 2nd Respondent and the Applicant for breach of the debenture agreement and breach of the comprehensive insurance policy contract respectively. The gist of the counterclaim against the Applicant was that the Applicant

A

did not adequately compensate the 1st Respondent for an accident that the vehicle was involved in. The Applicant filed its Written Statement of Defence to the Counter Claim denying liability and stated that the 1st Respondent was adequately compensated.

3. As part of its evidence the Applicant sought to tender in evidence the vehicle inspection report whose admission was objected to by the 1st Respondent and the Applicant undertook to file a certified copy of the report. Court proceeded with the hearing of the Respondents' case and on 2nd May 2023 when the matter was called for hearing of the Applicant's case, counsel for the Applicant informed court that they had discovered that the vehicle inspection report in question was forged and that they intended to amend their written statement of defence and file a counterclaim, hence this Application.
4. The grounds of the Application are contained in the Chamber Summons and the Affidavit in Support deponed by Leuben Ssajabi, claims manager with the Applicant who stated as follows:
 - a) In January 2015 the 1st Respondent reported to the Applicant that its vehicle Registration Number UAW 826G had been involved in an accident on the 23rd January 2015 in Nakapiripiriti- Moroto Road, and the Applicant compensated the 1st Respondent for the accident claim.
 - b) On 4th September 2015, the 1st Respondent reported a second accident involving the same subject vehicle that happened on 2nd August 2015 at Nakapiripiriti.
 - c) The 1st Respondent submitted the necessary documents and the Applicant compensated the Respondents.
 - d) The 1st Respondent was dissatisfied with the compensation and filed a counterclaim against the Applicant.
 - e) When the Applicant sought certification of the vehicle inspection report from Nakapiripiriti Police, it learnt from the

