

UGANDA / JUDGMENT

Bank of Baroda (U) Limited v Shukla (Miscellaneous Application 1379 of 2024) [2025] UGCommC 44 (10 January 2025) [2025] UGCommC 44

COURT

Commercial Court of Uganda

BEFORE

Tumusiime Rubagumya, J

CASE / FILE NUMBER

Miscellaneous Application 1379 of 2024

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**5 THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL DIVISION) MISCELLANEOUS APPLICATION NO. 1379 OF 2024
(ARISING FROM CIVIL SUIT NO. 734 OF 2024) 10 BANK OF BARODA (UGANDA)
LIMITED ::::::::::::::::::::::::::::::::::: APPLICANT VERSUS**

1. APARNA SHUKLA

2. MUKESH SHUKLA ::::::::::::::::::::::::::::::::::: RESPONDENTS

15 BEFORE: HON. LADY JUSTICE PATIENCE T. E. RUBAGUMYA

RULING

Introduction

This application was brought by way of Chamber Summons under **Section 98 of the Civil Procedure Act, Cap. 282** and **Order 6 rule 22 of the 20 Civil Procedure Rules SI 71-1**, seeking orders that:

- 1. The amended plaint in *Civil Suit No. 734 of 2024* be disallowed.
- 2. Costs of this application be provided for.

Background

The background of this application is contained in the Applicant's affidavit 25 in support affirmed by Mr. Sanal Jhanjhari, its Chief Manager, and is summarized below:

- 5 1. That the deponent is conversant with the 1st Respondent's original plaint in *HCCS No. 734 of 2024*, under which she sued the Applicant as the 1st Defendant and her husband as the 2nd Defendant for allegedly creating a mortgage on the said property without obtaining her spousal consent.
 - 10 2. That a plaint alleging fraud without disclosing the particulars of the fraud therein does not disclose any cause of action in fraud, and that a Defendant against whom such fraud is alleged unless he/she admits such alleged fraud is entitled to apply to the Court to strike out such allegations.
 - 15 3. That in its written statement of defence filed on 25th June, 2024 and served on the 1st Respondent's Counsel on the same date, the Applicant denied the alleged fraud and pleaded that the original plaint does not disclose a cause of action against the Applicant.
 - 4. That the 1st Respondent personally executed the mortgage deed, all 20 the requisite facility transaction documents together with her husband, the 2nd Respondent and the said mortgage deed bearing the 1st Respondent's undisputed signature was filed in Court with the original plaint.
 - 5. That in the original plaint, the 1st Respondent neither questioned nor 25 disputed her signature on the said mortgage deed nor did she question how her signature appeared on the said mortgage deed.
 - 6. That on 28th June, 2024, the 1st Respondent filed the amended plaint wherein she alleged that her signature on the spousal consent form and the mortgage deed were obtained fraudulently.
 - 30 7. That in the original plaint, the 1st Respondent did not allege that her spousal consent in respect of the said mortgage was fraudulently obtained.
- 5 8. That the 1st Respondent's amended plaint is intended to defeat the Applicant's defence in its written statement of defence.

In reply, the 1st Respondent through her affidavit in reply, opposed the application contending that:

- 1. The application is incurably defective, an abuse of Court process, 10 frivolous and vexatious as it is intended to waste Court's time and that the Applicant has no right to be heard before this Court.
- 2. The Applicant purportedly filed a draft defence on 15th July, 2024 which the Court rejected to admit for failure to pay Court fees.
- 15 3. Whereas the Applicant had purportedly filed a draft defence, it was filed after 28 days from the date of receipt of the summons and plaint which renders its defence invalid, having been filed out of time.

- 4. The Applicant is peddling lies that it erroneously filed a defence on ECCMIS under *Misc. Application No. 1127 of 2024* as per the 20 letter dated 12th July, 2024.
- 5. When the 1st Respondent's lawyers of M/s Alma Associated Advocates checked the pleadings under *Misc. Application No. 1127 of 2024*, there was no defence filed as alleged by the Applicant.
- 6. Upon reading the plaint as filed by her former lawyers and conferring with her lawyers of M/s Alma Associated Advocates, the 1st 25 Respondent discovered that her former lawyers did not state the particulars of fraud.
- 7. The 1st Respondent served the amended plaint on the Applicant on 29th June, 2024 before the Applicant filed its written statement of 30 defence and to date, she has never received any defence from it.

The 2nd Respondent Mr. Mukesh Shukla also opposed the application contending that:

- 5 1. The land comprised in Kibuga Block 29 Plot 205 land at Mulago, Kampala belongs to the 2nd Respondent and *Civil Suit No. 734 of 2024* was filed to determine the equitable rights of ownership by the 1st Respondent.
- 2. The amended plaint apportions and attributes fraud on the 2nd 10 Respondent and the Applicant.
- 3. The 2nd Respondent has since filed *Misc. Application No. 1849 of 2024* wherein he seeks the Court's permission to extend the time within which to file his written statement of defence.
- 4. The Applicant shall, during the hearing postulate to the Court how 15 the said consent was granted as the property was his and how the Applicant obtained consent from the 1st Respondent.
- 5. In *Misc. Application No. 1849 of 2024*, the attached written statement of defence of the 2nd Respondent avers that he does not know whether the Applicant obtained consent from the 1st 20 Respondent and the same can only be determined during the trial of the suit.

In rejoinder, the Applicant reiterated its previous averments and further contended that:

- 1. While filing the Applicant's defence, its lawyers mistakenly filed the 25 written statement of defence under *Misc. Application No. 1127 of 2024* and upon realization of the error, the Applicant wrote a letter to the Registrar requesting to have the same rectified.
- 2. The mistake on the formality of filing the Applicant's defence in the main suit is excusable as it is a mistake of the Applicant's Advocate 30 and thus should not be visited on the Applicant.

- 5 3. In the original plaint, the Applicant alleged that the Applicant's mortgage over the suit land was fraudulent because there was never spousal consent from her as the spouse of the 2nd Respondent and that the Applicant did not do the due diligence to ascertain that she was residing on the suit property.
- 10 4. After the Applicant filing its written statement of defence and adducing evidence to prove to the contrary; instead of the 1st Respondent disputing the same, she filed an amended plaint wherein she sought to change the cause of action and character of the suit from lack of spousal consent and failure to do due diligence 15 to one about the existence of the spousal consent that was procured through coercion, trickery and misrepresentation.
- 5. The purported amendment of the plaint is not to advance the particulars of fraud claimed in the original plaint but contends that the spousal consent forms and other mortgage documents were 20 actually executed, which is contrary and inconsistent with what was previously pleaded in the original plaint.

Representation

The Applicant was represented by Learned Counsel John Fisher Kanyemibwa of **M/s H&G Advocates**, while the 1st Respondent was 25 represented by Learned Counsel Emmanuel Kigenyi of **M/s Alma Associated Advocates** and the 2nd Respondent was represented by Learned Counsel Alex Akena of **M/s SF Ssekitto Co. Advocates**.

The parties were directed to file their written submissions but only the Applicant and the 1st Respondent complied with Court directives and their 30 submissions have been considered by the Court.

5 Issues for Determination

- 1. Whether the amended plaint in *Civil Suit No. 734 of 2024* should be allowed?
- 2. What remedies are available to the parties?

fatally defective pleadings which is not permissible.

Issue No.1: Whether the amended plaint in *Civil Suit No. 734 of 2024* 10 should be allowed?

Applicant's submissions

Learned Counsel for the Applicant relied on **Order 2 rule 1** and **Order 6 rule 23 of the Civil Procedure Rules** regarding the right to apply to Court to disallow an amendment. Counsel further relied on the case of *Gasó*

15 *Transport Services (Bus) Limited Vs Martin Adala Obene SCCA No. 4 of 1994*, in which the Supreme Court laid down the principles under which an amendment may be allowed. Counsel submitted that the 1st Respondent's amended plaint ought to be disallowed because; it seeks to introduce a new and distinct cause of action which is not permitted, is 20 brought with malafide and aimed at defeating the Applicant's defence, is incompatible with the 1st Respondent's original plaint and seeks to amend

Regarding the ground that the 1st Respondent's amendment discloses a new and distinct cause of action; Counsel submitted that the claim by the

25 1st Respondent in her original plaint was essentially that the Applicant and the 2nd Respondent executed a mortgage without doing due diligence and obtaining her spousal consent. That her cause of action was to vindicate her right of occupancy under **Section 38A of the Land Act, Cap. 227 (now Section 39 of Cap. 236)** over the mortgaged property as a spouse. 30 That upon the Applicant filing and serving its defence, the 1st Respondent

- 5 purported to amend its plaint, contending that she had actually signed various transactional documents and even given her spousal consent but that her signature was procured through fraud, misrepresentation, coercion and undue influence, thereby purportedly converting her claim from one under the Land Act to one under the Contracts Act. To that, 10 Counsel concluded that by her amended plaint, the 1st Respondent is trying to substitute her previous cause of action as an alleged holder of a right of occupancy over land to one as a contracting party to the transactional documents which are the basis of the loan and mortgage,
- 15 his submissions, Counsel relied on the case of *Ashraf Kironde Vs Kobil (U) Limited HCMA No. 828 of 2021* where this Court rejected a similar amendment.

Regarding the ground that the amendment is aimed at defeating the Applicant's defence to the original plaint; Counsel relied on the Supreme

which she had previously contended that they did not exist. To buttress

- 20 Court case of *Legal Brains Trust Vs Hassan Basajjabalaba & 14 Others Supreme Court Constitutional Application No. 03 of 2024* wherein it was held that an amendment to introduce a distinctively new cause of action or defeat a party's defence will not be allowed.
- That in the present case, the 1st Respondent, in her original plaint, pleaded 25 that the Applicant did not obtain her spousal consent. That however, after the Applicant demonstrating in its defence, that the 1st Respondent not only executed the mortgage; but also signed various transactional documents including the offer letter, mortgage and a guarantee, she then purported to amend her plaint and avoid the Applicant's defence by 30 contending that the said documents were procured by undue influence and misrepresentation. Further, that the 1st Respondent produced the

- 5 mortgage deed in question in her original plaint but did not question her signature on the same, as a Director of the borrower Company. That therefore, the 1st Respondent's amended plaint seeks to avoid the Applicant's defence to the 1st Respondent's allegations which amounts to malafide conduct in litigation.
- 10 Regarding the contention that the amended plaint is incompatible with the 1st Respondent's original plaint; Counsel submitted that the amendment introduces new averments that are completely inconsistent with the 1st Respondent's original pleadings.
- Lastly, Counsel submitted that the amendment seeks to cure a fatally defective plaint. That under **Order 6 rule 3 of the Civil Procedure Rules**, all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, willful default or undue influence, and in all other cases in which particulars may be necessary, the particulars with dates should be stated in the pleadings. That in this case, the 1st Respondent 20 pleaded fraud but did not state the particulars which are mandatory as per the case of **Lubega Vs Barclays Bank (U) Ltd [1990-1994] EA 294** and **Sun Air Limited Vs Nanam Transport Co. Limited HCCS No. 229 of 2009**. In conclusion, Counsel submitted that since the pleadings being sought to be amended are fatally defective, such an amendment is not
- 25 permissible.

1st Respondent's submissions

In reply, Learned Counsel for the 1st Respondent argued that this application is an abuse of the Court process and a fishing expedition intended to waste the Court's time. Counsel relied on the case of **Attorney**

30 **General & Uganda Land Commission Vs James Mark Kamoga and Another SCCA No. 8 of 2004** to define the term abuse of the Court

5 process. Counsel submitted that the Applicant is using **Order 6 rule 22 of the Civil Procedure Rules** for an improper purpose as no new cause of action has been introduced.

Counsel further contended that the Applicant has no locus/right to be heard before this Court because it has no valid written statement of 10 defence before Court neither did it serve the same on the 1st Respondent. While referring to paragraphs 6 and 7 of the 1st Respondent's affidavit in reply, Counsel contended that the Applicant purportedly filed a draft defence on 15th July, 2024 and the same was rejected by the Court for failure to pay Court fees. Further, that the said defence was filed 28 days 15 from the date of receipt of the summons and plaint which renders it to have been filed out of time without leave. That the Applicant cannot rely on a defective written statement of defence to file this application. That the said defence is dated 18th March, 2024 which dates back before the 1st Respondent filed **Civil Suit No. 734 of 2024**.

- 20 As to whether the application is clothed with grounds for its grant, Counsel for the 1st Respondent cited **Article 126(2)(e) of the Constitution of the Republic of Uganda, 1995** and prayed to this Court to invoke its inherent powers under **Section 98 of the Civil Procedure Act** and allow the amendment under **Order 6 rule 19 of the Civil Procedure Rules**. Counsel
- 25 also relied on the case of **Eastern Bakery Vs Castelino [1958]1 EA 461** for the proposition that an amendment can be allowed if no injustice is caused to the other side and that there is no injustice if the other side can be compensated with costs.

Counsel submitted that in regard to the amendment before Court, no 30 injustice will be occasioned on the Applicant since the amendment only

5 seeks to provide particulars of fraud, illegalities and misrepresentations which were earlier pleaded in the original plaint.

Counsel further submitted that the original plaint was filed on 14th June, 2024 and the amended plaint was served onto the Applicant on 27th June, 2024 and at the time, there was no valid written statement of defence filed

10 by the Applicant on Court record since the one it intended to file was rejected for nonpayment of Court fees.

Counsel further submitted that as per **Order 6 rule 19 of the Civil Procedure Rules**, the purpose of amendment is to determine the real questions in controversy between the parties. Counsel referred to 15 paragraph 12(viii-x) of the 1st Respondent's affidavit in reply. To this Counsel relied on the case of **Nicholas Roussos Vs Gulam Hussein Habib Virani & Another SCCA No. 9 of 1993** for the principle that mistakes of Counsel should not be visited on the litigant.

In further submission, Counsel relied on a decision by the Supreme Court

- 20 of India in the case of **Dinesh Goyal @ Pappu Vs Suman Agarwal (Bindal) & Others Civil Appeal No. 726 of 2024** wherein principles on amendment of a plaint were laid down to include that; an amendment can be allowed at any stage in the legal proceedings, it must be necessary to determine the real question of controversy and that if it is carried out by a
- 25 party, post the commencement of the trial, the Courts must, while granting such leave to amend, ought to come to a conclusion that, such an amendment could have been carried out prior to that particular point of time when the same was actually brought. That the same principles were applied in Uganda in the cases of **Gas Transport Services (Bus) Ltd Vs**
- 30 **Martin Adala Obene (supra)** and **Sarope Petroleum Ltd Vs Orient Bank Ltd and 2 Others Misc. Application No. 72 of 2022**.

5 Applicant's submissions in rejoinder

Regarding the 1st Respondent's contention that this application is an abuse of Court process, Counsel defined abuse of Court process as per the cases of *Kings College Budo Staff Savings Scheme Limited Vs Zaverio Samula & Another HCCS No. 26 of 2020* and *Meera Investments*

10 *Limited & Others Vs Nelson Lukozi HCMA No. 399 of 2022*. Counsel also referred to paragraphs 4-8 of the affidavit in rejoinder that show the purpose of this application. That as per the case of *Night Nagujja Vs Namuwonge Agnes & Others HCMA No. 1878 of 2021*, the Court held that it is not enough for a party to throw unsubstantiated allegations at the Court, hoping that the Court will fill in the gaps, speculate or use its powers to separate the hay from the chaff.

On whether the Applicant has the locus to file this application; Counsel invited the Court to consider paragraph 4 of its affidavit in rejoinder and be persuaded by the UK case of *Carter Moore Solicitors Limited [2020]*

20 *EWHC 186 (Ch)* in which the UK High Court held that errors in the electronic filing of pleadings and documents in an electronic Court system were not fatal, especially where they were promptly regularized. That in the present case, evidence shows that the mistake was quickly regularized and did not affect the Respondents in any way and that the Applicant 25 proceeded to serve its written statement of defence onto 1st Respondent as evidenced by annexures "B", "C" and "D" attached to the affidavit in rejoinder.

In conclusion, Counsel emphasized that the Applicant has demonstrated that the 1st Respondent's amendment seeks to raise a distinctively new 30 cause of action inconsistent with its previous pleadings, that the purpose

5 of this amendment is to defeat the unassailable defence of the Applicant and purport to cure a fatally defective plaint.

Analysis and Determination

I shall first consider the contentions of the 1st Respondent's Counsel that this application is an abuse of the Court process and that the Applicant 10 has no locus to file this application since its written statement of defence was filed out of time and never served onto the 1st Respondent. Since the 1st Respondent's submissions are premised on **Order 6 rule 22 of the Civil Procedure Rules**, I shall jointly resolve this contention with issue No. 1.

- 15 As to whether the Applicant has locus to bring this application, I have looked at the pleadings of both Counsel and their submissions thereto. The 1st Respondent contends that the Applicant's written statement of defence was rejected for nonpayment of Court fees. In evidence the Applicant referred to annexure "AS2" attached to the affidavit in reply.

- 20 According to paragraph 4 of the Applicant's affidavit in rejoinder; upon being served with summons in *Civil Suit No. 734 of 2024* on 17th June, 2024, the Applicant filed its written statement of defence on 19th June, 2024 and served the same on the 1st Respondent's lawyers. Annexure "B" attached to the affidavit in rejoinder was presented in evidence. Counsel
- 25 for the Applicant further submitted that while filing the defence on behalf of the Applicant, its lawyers mistakenly filed the written statement of defence under the ECCMIS file for *Misc. Application No. 1127 of 2024* which the parties were litigating at the time instead of the ECCMIS file for the main suit as seen in annexure "C" attached to the affidavit in 30 rejoinder. That upon realizing the said error, the Applicant's Advocates wrote to this Court seeking that the said defence be channeled to the

5 ECCMIS file of the main suit as evidenced by annexure "D" attached to the affidavit in rejoinder. That the said error was inadvertent and did not prejudice the 1st Respondent in any way.

I have looked at the annexures referred to hereinabove. Annexure "B" attached to the affidavit in rejoinder is a written statement of defence for 10 the 1st Defendant, the Applicant herein. Annexure "D" is a letter dated 12th July, 2024 where in reference to the subject of *HCCS No. 734 of 2024*, the Applicant's lawyers wrote to the Registrar informing Court about the error and requesting that the defence be channeled to pleadings. Annexure "C" shows that the 1st Defendant's written statement of defence 15 was filed on 19th June, 2024 under the ECCMIS file of *Misc. Application No. 1127 of 2024*. The Assistant Registrar **Her Worship Christa Namutebi** admitted it on 28th June, 2024. The same defence was served on the 1st Respondent's former lawyers M/s Bwango Araali & Co. Advocates as per the stamp on annexure "B" attached to the affidavit in 20 rejoinder. However, the date of receipt is not clear but according to **paragraph 4(b)** of the affidavit in rejoinder, the written statement of defence was received on 19th June, 2024 and the 1st Respondent's former lawyers did not protest against the service. The amended plaint was filed on 27th June, 2024. As stated above, the Applicant/1st Defendant's defence was admitted/ signed by **Her Worship Christa Namutebi** on 28th 25 June, 2024. There is a PRN 2240017881755 for payment of Court fees made on 20th June, 2024 by Bank of Baroda (U) Ltd for a written statement of defence. According to annexure "AS2" attached to the 1st Respondent affidavit in reply, on 15th July, 2024, the lawyers filed the 1st Defendant's 30 written statement of defence on the ECCMIS file for *Civil Suit No. 734 of 2024* and a note of "pay fees" was indicated by the Assistant Registrar on 14th August, 2024. However, the same written statement of defence had 5 been filed but under *Misc. Application No. 1127 of 2024* and the Court fees had been paid as stated hereinabove.

As per the above, it is evident that there was an error on the part of Counsel for the Applicant wherein the written statement of defence was filed under *Misc. Application No. 1127 of 2024* instead of the main suit, 10 *HCCS No. 734 of 2024.* In the circumstances, I find the above error

- curable under **Article 126(2)(e) of the Constitution of the Republic of Uganda, 1995**. Further, the 1st Respondent also contends that the Applicant's written statement of defence in the main suit is dated 18th March, 2024 which was before the 1st Respondent instituted *Civil Suit*
- 15 *No. 734 of 2024*. However, considering the fact that the Applicant was served with the plaint and summons on 17th June, 2024, the written statement of defence was filed and uploaded on ECCMIS on 19th June, 2024 as well as the fact that it was received by 1st Respondent's former lawyers without any objections; then it can be inferred that the same was
- 20 filed within the timelines. I have however noted that there was an error on the date indicated on the written statement of defence by Counsel for the 1st Defendant, which is on the part of Counsel and not the litigant. In my view, this error on the part of Counsel should not be visited on the litigant. In the case of *Attorney General Vs A. K. P. M Lutaaya SCCA No. 12 of*
- 25 *2002*, **Katureebe JSC**, held that the litigant's interests should not be defeated by the mistakes and lapses of his Counsel. The same was considered in the case of *Godfrey Magezi and Brian Mbazira Vs Sudhir Ruparelia SCC Application No. 10 of 2002*.

In view of the above, I find that the Applicant filed its written statement of 30 defence within time. The filed written statement of defence of the Applicant is therefore valid and thus, the Applicant has locus to file this application.

5 I shall now proceed to determine whether the amended plaint in *Civil Suit No. 734 of 2024* should be allowed?

Order 6 rule 19 of the Civil Procedure Rules stipulates that:

"*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* 10 *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 above provision explicitly vests this Court with discretionary power to allow the amendment of pleadings at any stage of the proceedings to 15 determine the real issues in controversy between the parties. The principles that govern the amendment of pleadings were laid out in the case of *Gasu Transport Services (Bus) Ltd Vs Martin Adala Obene (supra)* and these include that:

- i) The amendment should not work as an injustice on the other side.
- 20 ii) Multiplicity of proceedings should be avoided so far as possible and all amendments which avoid such multiplicities should be allowed.

- iii) An application which is malafide should not be granted.
- iv) No amendment should be allowed where it is expressly, or 25 impliedly prohibited by any law.

I am also alive to the principle that where a plaintiff discloses a cause of action but is deficient in particulars, the plaintiff can be amended so as to include the particulars as was held by the Supreme Court in the case of

Tororo Cement Co. Ltd Vs Frokina International Ltd SCCA No. 2 of*

30 *2001*.

5 Further, in the case of *Eastern Bakery Vs Castelino (supra)** Court held that the powers of amendment should not be used to substitute one cause of action for another or change an action into another of a substantially different character.

Order 6 rule 22 of the Civil Procedure Rules also provides that:

10 "Where a party has amended his or her pleading under rule 20 or 21 of this Order, the opposite party may within fifteen days from the date of service upon or delivery to him or her of the duplicate of the amended document apply to the Court to disallow the amendment or any part of it; and the Court may, if satisfied that the justice of the* 15 *case requires it, disallow the amendment or any part of it or allow it subject to such terms as to costs or otherwise as may be just."*

In the instant case, the 1st Respondent avers that the amended plaintiff seeks to provide more and better particulars of fraud as well as particularize the illegalities and misrepresentation which were pleaded 20 earlier in the original plaintiff. On the other hand, the Applicant contends that the particulars sought to be added are a change of the cause of action and that the amendment is aimed at defeating the Applicant's defence in the main suit.

As per **paragraph 3(b)** of annexure "AS6" attached to the affidavit in reply, 25 in the original plaintiff in *Civil Suit No. 734 of 2024**; the 1st Respondent sought a declaration that the mortgage or pledge of property comprised in Kibuga Block 29 Plot 205 land at Mulago, Kampala was void, fraudulent, illegal and unenforceable. The above prayer was premised on the averments under **paragraph 6** of the original plaintiff, which is to the effect 30 that the failure to obtain the 1st Respondent's spousal consent before the

5 creation of a mortgage over her matrimonial home was fraudulent and rendered the mortgage void and illegal.

However in the amended plaintiff, the 1st Respondent seeks to amend the plaintiff to include prayers such as; a declaration that the impugned signatures on the alleged spousal consent and mortgage deed, if any, were 10 obtained fraudulently, through coercion, trickery and misrepresentation and a declaration that the impugned signatures of the Plaintiff (the 1st Respondent herein) appended on the; board resolution for availing and securing credit facilities, sanction letter dated

30th March, 2016, individual Guarantor form, impugned spousal consent dated 31st March, 2016 and 15 mortgage deed dated 31st March, 2016 were obtained fraudulently through coercion, trickery and misrepresentation. The amended plaintiff further pleads particulars of fraud against each Defendant.

In my observation, the fraud referred to in the original plaintiff was attributed to a mortgage obtained without the 1st Respondent's consent 20 while the fraud in the amended plaintiff arises from allegations that there was indeed consent but the signatures were fraudulently obtained by coercion, trickery and misrepresentation.

Further, contrary to the submissions of Counsel for the 1st Respondent, the 1st Respondent never pleaded coercion, misrepresentation and undue 25 influence in the original plaintiff as alleged.

I therefore, agree with Learned Counsel for the Applicant that the amendment alters the cause of action in the original plaintiff and is aimed at defeating the Applicant's defence. In light of the holding in the case of **Tororo Cement Co. Ltd Vs Frokina International Limited (supra)** and 30 **Eastern Bakery Vs Castelino (supra)**, I am therefore, convinced that

- 5 allowing the 1st Respondent's amended plaintiff which includes other causes of action such as coercion, misrepresentation and undue influence, amounts to alteration of the cause of action which will prejudice the 1st Respondent's defence. Also, the amended plaintiff changes the 1st Respondent's cause of action in the original plaintiff into another of a
- 10 substantially different character.

In view of the above, the 1st Respondent's amended plaintiff in **Civil Suit No. 734 of 2024** is disallowed.

In finality therefore, this application is granted with the following orders:

- 1. The amended plaintiff in **Civil Suit No. 734 of 2024** is hereby 15 disallowed.
- 2. Costs of this application shall be in the cause.

I so order.

Dated, signed and delivered electronically via ECCMIS this 10th day of January, 2025.

Patience T. E. Rubagumya **JUDGE** 10/1/2025

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