

**Bisereko v Kyenjojo District Local Government  
(Miscellaneous Application No. 59 of 2022)  
[2022] UGHC 64 (23 November 2022)**

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directions to the parties to file their respective witness statements and Joint Scheduling Memorandum to commence the hearing.

### **The applicant filed this application seeking for leave to amend the**

amended plaint in the main suit to add prayers that include special damages, reinstatement, salary increment arrears and a declaration that the applicant was unlawfully terminated and retired.

This Application is supported by the affidavit of Bisereko Edward, the applicant. The Applicant's application herein is brought on grounds that it is necessary to amend the Plaint in order to determine the real questions in controversy between the parties, that the proposed amendments shall not prejudice the Respondents in any way, and that it is in the interests of justice that the application be allowed to enable the parties to achieve the real ends of justice.

The respondent opposed the application by the affidavit of John Nyakahuma, the Chief Administrative Officer of the respondent. He states inter alia that the applicant seeks to benefit from the salary increment for the years 2016-2022 when the applicant was already retired. That the several applications for amendment have had unwarranted financial implications of the respondent and that the respondent will be highly prejudiced by the grant of this application. He also deposes that the application is brought in bad faith.

### **Representation and hearing**

The applicants are represented Sebanja & Co. Advocates, jointly with Kayonga, Musinguzi & Co. Advocates. The respondent is represented by Ms. Atumanyise Rachael of Attorney General's Chambers, Fort Portal. The hearing proceeded by way of written submissions. Written submissions were filed on behalf of both parties and I have considered the same in this ruling.

### **Consideration by court**

*\*Ruling of Hon. Justice Vincent Emmy Mugabo\**

The Court has wide and extensive powers to allow the amendment of pleadings. These powers are designed to prevent the failure of justice due to procedural errors, mistakes, and defects. Thus the object of amendment of pleadings is to enable the parties to alter their pleadings so as to determine the true substantive merits of the case, having regard to substance rather than form.

Thus, under **Section 100 of the Civil Procedure Act**, it provides for the general power to amend; *"\*The court may at any time, and on such terms as to costs or otherwise as it may think fit, amend any defect or error in any proceeding in a suit; and all necessary amendments shall be made for the purpose of determining the real question or issue raised by or depending on such proceeding\*"*

However, it should be noted that the Court cannot amend pleadings under the above provisions where to do so would be tantamount to exonerating a party from complying with statutory provisions (see *\*Biiso Vs Tibamwenda* [1991] HCB 92\*)

An amendment ought to be pursued at the earliest available opportunity, that is, as soon as the issue which requires amendment is brought to the party's attention. A party, therefore, should not leave their application to a stage so late in the proceedings that to allow an amendment then would be unjust to his opponent (see *\*Eastern Bakery Vs Castelino* [1958] EA 461\*).

Even in the foregoing authorities, an application for amendment should be allowed however careless the omission may have been and however late the proposed amendment, if the amendment can be made without injustice to the other side (see *\*Nsereko Vs Taibu\** *\*Lubega* [1982] HCB 51\*). The Court in *\*Wamanyi Vs Interfreight Forwarders (U) Limited* [1990] KALR 67\* held that there is no injustice if the other side can be compensated for by costs. Therefore to the extent that the other party could be compensated by costs for the inconvenience caused by the amendment, an amendment ought to be allowed.

The Supreme Court in *\*Gasu Transport Services Limited v Martin Adala Obene* SCCA 4 OF 1994\* laid down the following principles which govern the exercise of discretion in allowing amendments:

- i. The amendment should not work injustice to the other side. An injury that can be compensated for by way of costs is not treated as an injustice.
- ii. The multiplicity of proceedings should be avoided as far as possible and all amendments, which avoid such multiplicity, should be allowed.
- iii. An application which is made mala fide should not be granted.
- iv. No amendment should be allowed where it is expressly or impliedly prohibited by any law (Limitation of Action).

In this case, the amendment sought is to include prayers for special damages, reinstatement, salary increment arrears and a declaration that the applicant was unlawfully terminated and retired. Counsel for the applicant submits that the present application is intended to abandon the prayers for gratuity, pension, terminal benefits and interest thereon and introduce the new prayers as aforesaid. Counsel further submits that the present application will not be prejudicial to the respondent since it is not intended to introduce new matters outside the knowledge of the respondent or different accounts of events.

### **Counsel for the respondent argues that the application is brought in bad**

faith as the amendments sought to be made are intended to place unsubstantiated financial burdens on the respondent which could also lead to irregularities. Counsel relied on the case of *\*Matagala Vincent Vs\**

\*URA HCMA No. 25 of 2013\* to argue that applications for amendment that are brought in bad faith should not be allowed by court. It is also argued for the respondent that the present application is an afterthought as the prayers sought to be added ought to have been added or substituted in the first amendment of the applicant's plaint.

Counsel for the respondent prays in the alternative for the costs of this application if the same is granted by the court.

I have already noted that Civil Suit No. 030 of 2018 which is sought to be amended was filed in 2018. The applicant has been previously granted leave to amend his plaint in 2020. The amended plaint presented on record has been responded to by the respondent. This court also issued directions to the parties with the view of proceeding with the hearing of this suit but the same were not taken seriously by the applicant. Instead, the applicant has ventured into changing his advocates every now and then.

I have considered the parameters that should guide the court in deciding an application like the present one as well as the submissions of both counsel. I find that the intended amendment herein does not introduce a new cause of action to the suit but new prayers that are based on the existing cause of action and existing set of facts as claimed by the applicant. I find that this is a proper case for the grant of leave to amend the amended plaint in Civil Suit No. 030 of 2018.

However, I am also persuaded by the respondent's prayer that costs of the application be granted to the respondent and the same is granted to remedy for the applicant's conduct.

In the ultimate result, the application succeeds with costs to the respondent. The applicant is granted leave to amend the plaint in Civil Suit No. 030 of 2018 to give effect to this ruling within 7 days from the date of this ruling. Any response to the amended plaint shall be filed and served within 14 days thereafter.

I so order

Dated at Fort Portal this 23rd day of November 2022.

**Vincent Emmy Mugabo**

**Judge**

The Assistant Registrar will deliver the ruling to the parties

**Vincent Emmy Mugabo Judge**

23rd November, 2022.

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