

**Bonabana v Byamugisha Baby Coach
& Sons Transport Co. Ltd and others
(Miscellaneous Application No. 100 of
2022) [2023] UGHC 6 (10 January 2023)**
[2023] UGHC 6

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10 4. MULERA FRED:::::::::::::::::::::::::: RESPONDENTS

BEFORE: HON. JUSTICE VINCENT WAGONA RULING**15 Introduction:**

This ruling is in respect of an application brought under Section 98 and 100 of the Civil Procedure Act, Section 33 of the Judicature Act, Order 6 Rules 19, 23 and 33, Order 1 Rule 10 (2) and (4) , Order 1 Rule 13 of the Civil Procedure Rules seeking orders that:

- 20 (a) Leave be granted to the Applicant to amend the plaint to add the 2nd and 3rd Respondents as defendants in HCT -01 – CV – CS No. 010 of 2020.
- (b) That leave be granted to the Applicant to strike out the 1st defendant (BYAMUGISHA & SONS CO. LTD T/A BABY COACH) in the main suit

and substitute him with the 1st Respondent as a defendant in HCT –CV 01 – CS – No. 010 of 2020.

- (c) That leave be granted to the Applicant to amend the plaint to indicate that she is suing through her duly appointed attorney.
- 5 (d) That the costs of taking out the application be provided to the Applicant.

The History:

The grounds in support of the application are contained in the affidavit in support of the application deposed by Muhimbo Samuel in which he avers:

- 1. That he is a holder of powers of attorney for the Applicant. That the Applicant sued some of the Respondents for negligence and vicarious liability in HCT – 01 – CV – CS No. 010 of 2020 as a result of the accident from which the Applicant sustained permanent injuries to wit, loss of her limbs and the matter is still pending hearing before this Court.
- 2. That subsequently due to the injuries she sustained in the accident which is the subject matter in the main suit, she had to travel out of the country to link up with her Husband to obtain further and better medical care and was thus advised to get an attorney to continue the prosecution of the suit.
- 3. That upon further inquiries, the Applicant was advised by her lawyer that the proper parties to the suit are the 1st Respondent and not BYAMUGISHA & 20 SONS CO, LTD T/A BABY COACH and thus prayed that the 1st Respondent be substituted as a defendant and the wrong party be struck out.
- 4. That the amendment is necessary to enable the Applicant prosecute her case conclusively and to ensure that the parties concerned are joined to this suit so that court can determine all questions in controversy.

- 5. That the amendment does not amend or alter/change the cause of action neither does it in any way depart from the Applicant's original claim and that the Respondents shall not be prejudiced by the current amendment.
- 6. That the 2nd Respondent is the owner and proprietor of the 1st Respondent, 5 while the 3rd Respondent is the registered owner and policy holder of Isuzu Bus Reg. No. UBB 461B labeled Baby Coach and the subject in the main suit.
- 7. That the 1st and 2nd Respondents are jointly and severally liable for utilizing the impugned bus for the business of transporting passengers from Kasese 10 via Fort portal to Kampala for commercial gain. That the bus was labeled BABY COACH which is used by the 1st and 2nd Respondent and the 4th Respondent is an employee of the 1st and 2nd Respondents.
- 8. That the amendment is necessary for the Applicant to join her cause of action against the Respondents and plead it at once so that all questions in 15 controversy are determined by court to avoid multiplicity of suits.
- 9. That the conclusive and effectual determination of the main suit requires the addition of the 1st and 2nd Respondents and the amendment does not alter the cause of action.
- 10. That it is in the interests of justice that this application is allowed and leave 20 granted to amend the plaint and add the 1st, 2nd and 3rd Respondents so that all questions in issue are heard by court once and for all.

Respondents' Reply:

- 1. The 1st Respondent denied the Applicant's averments and contended that they are not responsible or in any way connected or liable for the alleged 25 negligent act that led to the Applicant sustaining the alleged injuries.
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- 2. That 1st Respondent are not in any way connected to Motor Vehicle Reg No. UBB 462B ISUZU since it's not registered in their names nor managed by them or in any way connected to them.
- 3. That the 1st Respondent are not a proper party to this suit since the Applicant 5 has no cause of action against them as they are not in any way connected to the vehicle in issue.
- 4. That on the 11th July 2016, the 1st Respondent commenced a winding up process which culminated in the appointment of a liquidator and a gazette was issued to that effect way before the injuries alluded to.

- 10 5. That it is clear from the plaint and in the application that the Applicant wrongly sued Byamugisha & Sons Co. Ltd T/A Baby Coach and the 1st Respondent was not involved. That the 1st Respondent is not owned or run by the 2nd Respondent and neither does he own the said bus nor employ the 4 th Respondent.
- 15 6. That the 1st Respondent shall be prejudiced since the suit at hand would amount to going on a fishing expedition without due diligence from the Applicant on the proper parties to sue.
- 7. That the contents of the affidavit in support of the application do not support the prayers sought in the application. The 1st Respondent thus asked court to 20 dismiss the suit with costs.

The 2nd and 3rd Respondents in opposition of the application through an affidavit deposed by Katende Ezra, the 1st Respondent's Manager and the holder of powers of attorney of the 2nd Respondent contended as follows:

1. That the 2nd Respondent is not the owner of the 1st Respondent. That the 1st 25 and 2nd Respondents have never jointly and severally owned or utilized a bus No. UBB 461B ISUZU and that the 1st Respondent has no connection

whatsoever with the said bus. That the 1st and 2nd Respondent have never used the name BABY COACH for commercial benefit since the 1st Respondent has no connection whatsoever with the same.

- 2. That the 4th Respondent has never been an employee of the 1st and 2nd 5 Respondents. That the Applicant in her affidavit in support of the application failed to adduce grounds that warrant or justify the amendment of the pleadings and she is guilty of dilatory conduct and failed to carry out the due diligence as to the proper parties to sue.
- 3. That the 2nd Respondent is not responsible for the Applicant's failure to file 10 the suit against the other parties on time and that the application does not reveal sufficient grounds to justify the prayers in the plaint. That it is in the interests of justice that the application is denied.

The 4th Respondent in opposition of the application contended as follows:

- 1. That the 2nd Respondent is not the owner of the 1st Respondent. That the 15 averment by the Applicant that the 1st and 2nd Respondents have been jointly and severally utilizing the bus No. UBB 416B ISUZU is false since the 1st Respondent has no connection with the same. That the name BABY COACH has never been used for commercial benefit by the 1st and 2nd Respondents since the 1st Respondent has no connection whatsoever with the 20 said bus.

- 2. That he has never been an employee of the 1st Respondent. That the grounds in support of the application do not support the prayers sought and that the Applicant is guilty of dilatory conduct in filing this application for leave. That the application does not reveal sufficient grounds to justify the grant of 25 the prayers it seeks and thus the same should be dismissed with costs.

Issues:**5 | Page**

- 1. Whether this application is proper against the 1st and 2nd Respondents.
- 2. Whether the Applicant should be granted leave to amend the plaint and include the 1st, 2nd and 3rd Respondent's as parties to a suit.
- 3. Remedies available.

5 Representation:

M/s Mugabe Luleti & Co. Advocates represented the Applicant while M/s Kaganzi & Co. Advocates represented the 1st, 2nd and 4th Respondents. A schedule to file submissions was given on 7th November 2022 and only the Applicant filed written submissions which I have considered.

10 Resolution:***Applicant's submissions:***

It was submitted for the Applicant:

- 1. That section 98 of the Civil Procedure Act empowers this honorable court to address all the issues of law and facts. That it is further re-echoed under 15 section 33 of the Judicature Act which empowers court to grant remedies as parties may be entitled to. That the purpose is to ensure that in as far as possible that all matters in controversy between the parties might be completely and finally determined to avoid multiplicity of legal proceedings. That granting this application shall prevent the multiplicity of pleadings. 20 That it shall also help court to determine the real questions in controversy between the parties being liability of the Respondents to the Applicant.
- 2. That in the case of *Okello Wilbert Vs. Obel Ronald, High Court Misc. Application No. 097 of 2020,* the Hon Justice Boniface Wamala laid down the principles for grant of an application for leave to amend the plaint to 25 include:
 - (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) Amendment should not work an injustice to the others side. An injury 5 that can be compensated by an award of damages is not treated as an injustice.

- (c) Multiplicity of pleadings should be avoided as far as possible and all amendments which avoid such multiplicity should be allowed.
- (d) An application that is made mala-fide should not be granted.
- 10 (e) No amendment should be allowed where it is expressly or impliedly prohibited by law.
- (f) The court shall not exercise its discretion to allow an amendment which has the effect of substituting one distinct cause of action for another.
- 15 3. That all these requirements were satisfied by the Applicant and the application should be allowed since disallowing the same shall cause the Applicant massive injustice as she may end up instituting multiple suits against each of the Respondents. That the Respondents herein are the proper parties to the suit since it was demonstrated that the 1st and 2nd Respondent 20 was deriving an economic benefit from the bus and the accident was caused by the 4th Respondent's negligence and the 3rd defendant is a policy holder being an insurance company.
- 4. That allowing this application will go a long way in determining the real question in controversy that is, as regards liability of the Respondents and 25 will help avoid multiplicity of pleadings.

Consideration by Court:

Issue One: Whether this application is proper against the 1st and 2nd Respondents.

- It is contended by the 1st and 2nd Respondents that they have no connection at all with the bus in issue and that as such the Applicant has no cause of action against them. The 1st Respondent denies owning the bus No. UBB 416B Isuzu and contends that they are a wrong party to the suit and thus should not be added as a party to the main suit. The 2nd Respondent also avers that he does not own the 1st Respondent and neither does he together with the 1st Respondent derive any benefit
- 10 in running a transport business under the name 'BABY COACH' and that he was wrongly sued.

Order 1 Rule 3 of the CPR in providing for who may be joined as defendants states thus: "All persons may be joined as defendants against whom any right to relief in respect of or arising out of the same act or transaction or series of acts or"

15 "transactions is alleged to exist, whether jointly, severally or in the alternative, where, if separate suits were brought against those persons, any common question of law or fact would arise."*

Rule 5 provides that the Defendant need not be interested in all the relief claimed and states that: "It shall not be necessary that every defendant shall be interested in" 20 "all the relief claimed in any suit against him or her."

Rule 7 provides for when plaintiff is in doubt from whom redress to be sought and states that: "Where the plaintiff is in doubt as to the persons from whom he or she is entitled to obtain redress, he or she may join two or more defendants in order that the question as to which of the defendants is liable, and to what extent, may be" 25 "determined as between all parties."

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The above provisions allow a plaintiff to sue any person against whom any right to relief is alleged to exist and where there is doubt, to join defendants, in order that the question as to which of the defendants is liable, and to what extent, may be determined as between all parties.

- 5 The next question or issue raised by the 1st and 2nd Respondent was that the suit was filed against the 1st defendant as a wrong party and thus the amendment was bad in law in as far as it seeks to strike out the wrong part to the suit and replace her with the 1st Respondent.
- Under Order 1 Rule 5 and 7 of the CPR, a plaintiff is at liberty to add any party 10 against who he or she seeks relief. Where it is established that the plaintiff filed a suit against a wrong party than the one he is entitled to seek relief from, Order 1 Rule 10 (2) allows court upon application to remove such wrong party be substituted with the right party and the said order states thus: "The court may at any stage of the proceedings either upon or without the application of either party,"
- 15 "and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all questions"
- 20 "involved in the suit, be added"

Therefore, the fact that the Applicant filed a case against a wrong party does not render the current application a nullity. This court retains the discretion under Order 1 rule 10 (2) to remove such a party who was erroneously added as plaintiff or defendant and in lieu thereof order the addition of any party who ought to have 25 been added as the proper party or whose presence is necessary for the court to effectively determine all question in controversy before it.

I thus find that this application is proper against the 1st and 2nd Respondent.

Issue 2: Whether the Applicant should be granted leave to amend the plaint and include the 1st, 2nd and 3rd Respondent's as parties to the suit.

Order 6 Rule 19 of the Civil Procedure Rules governs the amendment of pleading

- 5 and it states thus: "Court may at any stage of the proceedings, allow either party to alter or amend his or her pleadings in such a 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"
- Amendments are paged on the need for courts to determine the real questions in 10 controversy between the parties and to avoid multiplicity of pleadings. It seems to me that as soon as it appears that the way in which a party has framed his case will not lead to a decision of the real matter in controversy, it is as much a matter of right on his part to have it corrected, if it can be done without injustice. (*See Cropper v Smith (1884) 26 Ch. D. 700 (CA).*)
- 15 The grounds upon which court may exercise its discretion to grant leave were laid down by the Supreme Court in *Gasu Transport Services Limited v Martin Adala Obene SCCA 4 OF 1994 [1994] VI KALR 5* to include:
 - *1. The amendment should not work injustice to the other side.*
 - *2. An injury that can be compensated for by way of costs is not treated as an* 20 *injustice.*
 - *3. The multiplicity of proceedings should be avoided as far as possible and all amendments, which avoid such multiplicity, should be allowed.*
 - *4. An application which is made mala fide should not be granted.*
 - *5. No amendment should be allowed where it is expressly or impliedly* 25 *prohibited by any law (Limitation of Action).*

The above grounds have been re-echoed in a number of decisions. In *Okello Wilbert Vs. Obel Ronald, High Court Misc. Application No. 097 of 2020,* the Hon. Justice Boniface Wamala stated the grounds in the following terms:

- (a) Amendments are allowed by the courts so that the real question in 5 controversy between the parties is determined and justice is administered without undue regard to technicalities.
- (b) Amendment should not work an injustice to the others side. An injury that can be compensated by an award of damages is not treated as an injustice.
- (c) Multiplicity of pleadings should be avoided as far as possible and all 10 amendments which avoid such multiplicity should be allowed.
- (d) An application that is made malafide should not be granted.

- (e) No amendment should be allowed where it is expressly or impliedly prohibited by law.
- (f) The court shall not exercise its discretion to allow an amendment which has the effect of substituting one distinct cause of action for another.

In the present application, the applicant alleges that upon inquiries, the Applicant was advised by her lawyer that the proper parties to the suit are the 1st Respondent and not BYAMUGISHA & SONS CO, LTD T/A BABY COACH and thus prayed that the 1st Respondent be substituted as a defendant and the wrong party be struck out. That the 2nd Respondent is the owner and proprietor of the 1st Respondent, while the 3rd Respondent is the registered owner and policy holder of Isuzu Bus Reg. No. UBB 461B labeled Baby Coach and the subject in the main suit. That the 1st and 2nd Respondents are jointly and severally liable for utilizing the impugned bus for the business of transporting passengers from Kasese via Fort portal to Kampala for commercial gain. That the bus was labeled BABY COACH which is used by the 1st and 2nd Respondent and the 4th Respondent is an employee of the 1st

and 2nd Respondents. It is contended that the Applicant sustained injuries while in a bus driven by the 4th Respondent bearing the name BABY COACH. The contention relates to who is responsible for compensating the Applicant for the injuries sustained and expenses incurred. The Applicant contends that the 5 Respondents are liable, which is denied by the Respondent. I thus believe the amendment and addition of the 1st, 2nd and 3rd Respondents is necessary in the determination of the real questions in controversy.

I am satisfied that application is not made mala-fide as the sought amendment is necessary for the determination of the real questions in controversy between the 10 parties to avoid a multiplicity of suits and it does not prejudice any side. I am equally satisfied that the amendment is not barred by limitation or any statute and the cause of action against the Respondents has not been substituted. In the draft amended plaint attached to the affidavit in support of the application, the Applicant maintains the cause of action as being loss and compensation for the injuries sustained from the accident that happened where she was in a bus labeled baby coach driven by the 4th Respondent. I am convinced that this is a proper case for grant of leave to amend.

This application is therefore granted with orders that:

- **(a) The Applicant is granted leave to amend the plaint and add the 1st, 2nd and 3rd Respondents as defendants in HCT -01 – CV – CS No. 010 of 2020.**
- **(e) The 1st defendant (BYAMUGISHA & SONS CO. LTD T/A BABY COACH) is hereby struck out as a defendant in the main suit and substituted with the 1st Respondent as a defendant in HCT –CV 01 – CS 25 – No. 010 of 2020.**
- **(f) Leave is granted to the Applicant to amend the plaint to indicate that she is suing through her duly appointed attorney.**

- (g)The amended plaint shall be filed and served within 15 days from the date of delivery of this ruling.
- 5 (h)Each party shall bear their own costs.

I so order.

Vincent Wagona High Court Judge 10 Fort-portal

10-01-2023

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