

UGANDA / JUDGMENT

DFCU Bank Limited v Meera Investment Limited and Another (Miscellaneous Application 1087 of 2022) [2023] UGHCLD 170 (25 January 2023) [2023] UGHCLD 170

COURT

HC: Land Division (Uganda)

BEFORE

Asiimwe, J

CASE / FILE NUMBER

Miscellaneous Application 1087 of 2022

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(LAND DIVISION)

MISCELLEANOUS APPLICATION NO. 1087 OF 2022

(ARISING FROM C. S NO 948 OF 2017)

DFCU BANK LIMITED:.....

VERSUS**1. MEERA INVESTMENT LIMITED****2. THE COMMISSIONER LAND REGISTRATION ::: RESPONDENTS.****BEFORE: HON. MR JUSTICE TADEO ASIIMWE.****RULING**

The Applicant brought this application by way of Chamber Summons under Section 98 of the CPA and Order 6 Rules 19 & 31 of the Civil Procedure Rules (CPR) Seeking orders that:

The applicant be granted leave to alter or amend its written statement of defence in order to assist this honourable court to effectively determine the real questions in controversy between the parties.

2. The costs of this application be provided for.

The application is supported by an affidavit sworn by MUHAMMAD KIWANUKA SSENOGA, the legal manager, litigation of the Applicant. The grounds of the application are there in set in the affidavits and the chamber summons, but briefly that:

1. The applicant filled its written statement of defence to the 1st respondent's case on the 23rd of January 2018.
2. On the 2nd of June 2022, the applicant retained new counsel, Katende Ssempebwa and company advocates to represent it in the above high court civil suit.
3. That the new counsel has since its retention advised the applicant (which advise the applicant verily believes to be true that the written statement of defence contains averments and pleadings which are no longer applicable to the dispute due to a change in the circumstances.

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4. The applicant, through its newly retained counsel has been made aware of facts that warrant and necessitates an amendment of the applicants written statement of defence to enable court properly adjudicate the disputes'
5. The removal of averments and pleadings that are no longer applicable to the dispute and addition of pleadings and averments related to above said new facts in necessary for the determination of the real questions in controversy between the parties.
6. The above application has been brought without undue delay.
7. The proposed amendments will not prejudice the respondents in any way at all.

O 8. It is in the interest of justice, equity, fairness and therefore necessary that this application be allowed so that the applicant can amend its written statement of defence.

Costs abide the outcome of this court

In response the 1st respondent through an affidavit sworn by DR. SUDHIR RUPARELIA stated that the proposed amendments of the 1st defendant's written statement of defence are highly prejudicial to the 1st respondent and offends the principles underlying amendment. That the application is misconceived, bad in law and hinged on wrong principles of law and procedures. That the application as presented is not legally tenable, is a wanton abuse of court process, frivolous, vexatious and does not meet the legal and evidential threshold of the orders sought. That the intended amendments intend to introduce a new cause of action. o Representation.

At the hearing, the Applicant was represented by Counsel Arthur Sempebwa together with Edwin Mugumya, the 1st respondent by Counsel Joseph Kyazze and Alex Kamukama while the 2nd respondent was represented by Mr. Ssekitoleko Moses and Bamulaga Edwin. All counsel were directed to file written submissions which they did.

Issues.

1. Whether the Applicant should be granted leave to amend its statement of defence.
2. Remedies available.

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In his written submissions, counsel for the applicant submitted relying on the order 6 rule 19, the affidavit in support and decided cases that he intends to show some illegalities on how the 1st respondent acquired the suit property and lack of locus in the main case which had not been included in the defence to the case.

That the applicant had adopted and incorporated by reference the pleadings in civil suit number 943 of 2017 between crane Bank and the ltd and the respondent which was pending then but has since been dismissed on technicality thereby rendering reliance on it useless hence a need to amend by deleting some parts and replacing the old facts with new facts to reflect the actual position of the matter.

Counsel further argued that the amendment is necessary for adjudication and determination of the real question in controversy. That the applicant has satisfied all the grounds for amendment as set out in the law and that the intended amendment will not occasion an injustice to the 1st respondent as he will have an opportunity to reply. In addition the amendment will serve to avoid multiplicity of suits.

On the other hand, the 1st respondent's Counsel submitted that they do not oppose paragraph 16 and 29 of the proposed statement of defence as they are affected by the decision in HCCS NO. 493/2017. That however all the other paragraphs offend the law on amendment as they introduce complete changes and material departure. That this application should fail for reasons that it intends to introduce a whole new defence.

The law.

Order 6 Rule 19 of the CPR empowers the 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 to include 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 **DOMINION** to technicalities.

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An amendment should not work an injustice to the other side. An injury that \$h\$ can be compensated by an award of damages is not treated as an injustice.

Multiplicity of proceedings should be avoided as far as possible and all \$\mathcal{C}\$. amendments which avoid such multiplicity should be allowed.

d. An application that is made malafide should not be granted.

- e. No amendments should be allowed where it is expressly or impliedly prohibited by any law.

\$g\$. 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: Gaso Transport Services (Bus) Ltd vs Obene (1990-1994) EA 88; Mulowooza & Brothers Ltd vs Shah & Co. Ltd, SCCA No. 26 of 2010; and Nicholas Serunkuma Ssewagudde & 2 Others vs Namasole Namusoke Namatovu Veronica HCMA No. 1307 of 2016.

Counsel for the Applicant in his pleadings and 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 applicant's written statement of defence.

From the pleadings, the basis of this application is to remove parts of the defence that are no longer relevant due to the outcome of Civil Suit number 493 of 2017 where the suit was dismissed on technicalities. However, a quick glance and comparison of the earlier defence in civil suit number 948 of 2017 and the intended statement of defence reveals that the two are completely different. It is clear the applicant intends to introduce a whole new defence to the extent that the applicant intends to change even the summary of evidence, list of witnesses and documents.

Materially, the gist of the earlier defense is that they were adopting the pleadings of crane bank in CS NO 493/2017 as its transferee. However, the outcome of that suit rendered its defence irrelevant hence this application to amend.

Abandoning part of the defence would be okay but introducing a different defence as intended in the new amended defence to introduce new set of facts is likely to change the outlook of the pleadings which is not legally acceptable as it introduces and changes the whole defence and point to a different direction.

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Further the intended amendment introduces other new objections to the suit for being premature, prolix, want of cause of action and being bad in law and an abuse of court process.

Ideally once a party realizes that the substance on which his defense was based is extinguished, it's no excuse to change the defense entirely to introduce a whole new defence. This kind of substitution of pleadings is not allowed. The law does not permit it as it would prejudice the opposite party especially when facts sought to be introduced were in the knowledge of the applicant.

In the circumstances therefore, I am satisfied that this application has been brought in bad faith and has potential of occasioning an injustice or prejudice against the Respondents since it intends to change the entire defence of the applicants.

Accordingly, the Applicant has not satisfied Court that it is entitled to be granted leave to amend its defence in the main suit. The application lacks merit and the same is hereby dismissed with costs. The remedy available to the parties is to fix the main case for hearing being a case of 2017.

-+- L - I so order.

TADEO ASIIMWE JUDGE 2s/0112023.

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