

UGANDA / JUDGMENT

Jjuko v Bwende (Miscellaneous
Application 220 of 2024) [2025]
UGHC 61 (31 January 2025)
[2025] UGHC 61

COURT

High Court of Uganda

BEFORE

Karemani Jamson K, J

CASE / FILE NUMBER

Miscellaneous Application 220 of 2024

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT KIBOGA

MISCELLANEOUS APPLICATION NO.0220 OF 2024

(Arising from Civil Suit NO.074 of 2024)

JJUKO PETER:.....

VERSUS

BWENDE RWEBWANA:.....

BEFORE HON. MR JUSTICE KAREMANI JAMSON. K

RULING

This is a ruling in an application brought by notice of motion under Order 6 Rule 22 of Civil Procedure Rules, Section 98 of Civil Procedure Act and Section 33 of Judicature Act Laws of Uganda.

The application seeks the orders of this court that;

- 1. The amended written statement of defence filed on 25th October 2024 in the main suit was filed out of time
- 2. No leave was sought to file the said amended written statement of defence.

- 3. The said amended written statement of defence doesn't disclose cause of action against the applicant/plaintiff.
- 4. The amended written statement of defence be rejected, struck out and disallowed for being filed out of time.

The notice of motion is supported by the affidavit deposed by Jjuko Peter whose grounds will be considered in this ruling.

The respondent filed an affidavit in reply opposing the application.

Schedules for filing of written submission were given by this court. The applicants counsel filed written submissions but the respondent's counsel did not.

This court will now proceed to pronounce its ruling based on the above proceedings.

Representation

The applicant was represented by Mr. Muhumuza Bob of \$M/\$\$ Ssemengo Co. Advocates while the respondent was represented by Mr. Karerega of \$M/\$\$ Obed Mwebesa & Associated Advocates.

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Submissions

The learned counsel for the applicant submitted that the amended written statement of defence and counterclaim in this matter was filed out of time. That the respondent filed the amended written statement of defence on 25th October 2024.

The learned counsel referred to Order 8 Rule 1 of Civil Procedure Rules which governs filing of counterclaims. He submitted that a counterclaim is supposed to be filed within 15 days from the date of service of the summons to file a defence. He prayed that the amended written statement of defence and counterclaim be struck out.

The learned counsel referred to the case of **Naggayi Versus Lwanga Civil Appeal No.30 of 2019** where it was held that it was wrong to allow the respondent to proceed on counterclaim which was introduced in an amendment without leave of court to file the same.

Background

The plaintiff filed a suit against four defendants. A withdraw of the suit against the 3rd defendant was granted by court and an amendment made accordingly.

Upon an alleged service of amended plaint on the defendants the plaintiff sought to proceed ex parte.

On the 12th June 2014 this court ordered fresh service of the plaint on the defendants.

On the 28th August 2024 the 1st defendant filed a written statement of defence.

On the 3rd September 2024 this court held scheduling conference of the matter after the 1st defendant had intimated to court that he was personally handling his matter. The matter was thereafter fixed for hearing on 29th October 2024.

On the 25th October 2024 the 1st defendant filed an amended written statement of defence with a counter claim which is the subject of this application.

In as far as the record is concerned there is nothing that shows that leave was obtained by the 1st defendant before the filing of the amended written statement of defence with a counterclaim.

The issues for resolution are:

1. Whether the amendment was filed out of time.
2. Whether leave was secured before amendment.
3. What are the remedies available?

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Decision of Court

Whether the amendment was filed out of time.

According to Order 6 Rule 21 of CPR it is allowed amend a counterclaim or a setoff without leave of court at any time within twenty-eight days from the date of filing the same.

It therefore follows that any other amendment after the twenty-eight days must be with leave of court.

In the instant case even if one counted from the date the first defence was filed, the amended written statement of defence with a counterclaim was filed long after twentyeight days and therefore out of time.

Whether leave was sought before filing the amended written statement of defence with a counterclaim

The respondent didn't plead to have secured leave and the record doesn't reflect any either.

I therefore come to the conclusion that no leave was secured before the amended written statement of defence with a counterclaim was filed in this matter.

Secondly I observe that in the initial defence there was no counter claim which was introduced which is equally barred by the law.

Remedies

The respondent having filed an amended written statement of defence with a counterclaim without securing the prerequisite leave of court it makes the amendment bad in law and incompetent. The law governing counterclaims is that leave has to be sought if time has expired.

See the case of Makula International Limited versus His Eminence Cardinal Nsubuga & Anor Court of Appeal Civil Appeal No.004 of 1981 where it was held that it is well established that court has no residual or inherent jurisdiction to enlarge a period of time laid down by a statute.

In the instant case the amended written statement of defence was filed out of time without the requisite leave being sought.

This application is accordingly allowed and the amended written statement of defence and the counterclaim filed out of time without leave of court are struck out.

Main $\sim$ $\mathop{\rm Costs}$

Costs of this application are awarded to the applicant.

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I so order.

[illegible]

KAREMANI JAMSON. K

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