

UGANDA / JUDGMENT

Kamudda v FX Mubuuke (Miscellaneous Application No. 230 of 2022) [2023]

UGHCCD 119 (28 April 2023)

[2023] UGHCCD 119

COURT

HC: Civil Division (Uganda)

BEFORE

Matovu, J

CASE / FILE NUMBER

Miscellaneous Application No. 230 of 2022

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THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT MUKONO
MISCELLANEOUS APPLICATION NO. 0230 OF 2022 ARISING FROM CIVIL SUIT NO.
002 OF 018 CHARLES KAMUDDA :::::::::::::::::::: VERSUS F. X
MUBUUKE ::::::::::::::::::::

BEFORE HONOURABLE JUSTICE DAVID MATOVU RULING

Introduction

- 1. Charles Kamudda (hereinafter referred to as the "Applicant") brought this application against F. X Mubuuke (hereinafter referred to as the "Respondent") under Section 98 of the Civil Procedure Act, Section 33 of the Judicature Act and Order 6 rule 19 of the Civil Procedure rules seeking for orders that:-
- Leave be granted to the Applicant to amend his written \$i)\$ statement of defence in Civil suit No. 002 of 2018 to include a counter claim.
- Costs of this application ii)

Background

- 2. The Respondent herein filed Civil suit No. 002 of 2018 against the Applicant herein and another.
- 3. The Applicant claims to have received the suit land as a gift intervivos through an agreement and will by his late grandmother, who was also a party to the main suit.

- 4. The Applicant sought services of M/s Zahura & Co. Advocates who indeed filed a defence, although his interests were not

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formerly catered for which prompted him to engage the services of M/s Praxlex Advocates in order to have his interests fully represented.

- 5. That he was advised by his new advocates that in order to have his interests fully represented, there was need for amendment of the defence and add a counter claim in order to bring to light some material facts that had been omitted.

Representation

- 6. At the hearing, the Applicant was represented by Mr. Paul Asaba while the Respondent was represented by Mr. Nester Byamugisha.

Evidence of the applicant

- 7. This application was supported by an affidavit deponed by the Applicant.
- 8. The Applicant states that the Respondent filed Civil suit No. 002 of 2018 against the Applicant herein and another, seeking for among others eviction orders against the Defendants.
- 9. The Applicant states that he sought legal services from M/s Zahura & Co. Advocates who indeed filed a defence on behalf of the Applicant.
- 10. That however, the Applicant realized that the defence that had been filed did not serve the interests of the Applicant as some material facts fundamental to his case had been inadvertently omitted.
- 11. That it is necessary to amend the written statement of defence and also add a counter claim.
- 12. That the amendment does not alter the Applicant's defence and will not prejudice or cause any injustice to the Respondent, rather it will clarify the Applicant/ Defendant's claim and also avoid multiplicity of suits.
- 13. That it is fair, equitable and in the interest of justice that this application is granted.

Evidence of the Respondent

- 14. At the time of writing this ruling, there was no affidavit in reply filed on Court record and this has an effect of rendering the application unopposed.

Legal arguments by Counsel for the Applicant

- 15. Counsel for the Applicant submitted that this application was for amendment of the written statement of defence of the applicant and premised on the following grounds;-
- 16. The previous Counsel did not raise pertinent issues.
- 17. That the Respondent will not be prejudiced by this Application.
- 18. Counsel relied on the case of **Winnie Okidi and others versus Fina Bank (U) Ltd Misc. Application No. 90 of 2013**.
- 19. Counsel rejoined that the issue of the will did not arise in the beginning because Namubiru Constance was still alive and she is the testator.
- 20. Counsel also submitted that the affidavit in reply was out of time.
- 21. Counsel prayed that Court allows the parties to present their evidence such that the issues are resolved in totality.
- 22. Counsel reiterated his prayer that the application be allowed.

Legal arguments by Counsel for the respondent

- 23. Counsel for the Respondent opposed the application and submitted that it is a miscarriage of justice as it purports to amend a joint written statement of defence.
- 24. Counsel further submitted that the intended amendment is premised on a purported will, which is invalid and seeks declaration of ownership of the suit land.
- 25. Counsel submitted that the Defendants should have acted in concert and amended the joint written statement of defence.

Counsel prayed that the application is dismissed with costs.

Issue for determination

26. Whether the Applicant has shown grounds entitling him to be granted leave to amend his plaint in the main suit.

Decision of court

27. Order 6 Rule 19 of the CPR empowers 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 or all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties."

- 28. 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 and they zero down to the following;
- i. 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.
- The amendment should not occasion injustice to the ii. opposite party.
- It should be granted if it is in the interests of justice and to iii. avoid multiplicity of suits
- The application should be made in good faith. iv.
- No amendments should be allowed where it is expressly or \$V\$. impliedly prohibited by any law.
- The court shall not exercise its discretion to allow an vi. amendment which has the effect of substituting one distinctive cause of action for another. See: Molowoza Brothers Ltd Vs N. Shah & Co. Ltd SCCA No.26 of 2010, Gaso Transport Services (Bus) Ltd vs Obene (1990-1994) EA 88, Eastern Bakery Vs Castelinov(1958) E. A 451, Nicholas Serunkuma Ssewagudde & 2 Others vs Namasole Namusoke Namatovu Veronica HCMA No. 1307 of 2016.
- 29. Upon consideration of the averments in the affidavit of the Applicant, Court finds that this application is not expressly or impliedly barred by any law. Court has also perused through the intended amended written statement of defence and counter claim and finds that the same does not substitute one distinct cause of action for another or introduce any new cause of action.
- 30. The application is therefore properly before this court and the court is in position to exercise its discretion, upon the grounds raised by the Applicant, to decide whether to allow or disallow the amendment sought for.
- 31. The Applicant has shown by affidavit that his former lawyers left out some facts, claims and attachments which were material to the just determination of his case. It was until they instructed his new lawyers M/s Praxlex Advocates that he was advised that some facts ought to be included in the Applicant's pleadings in the main suit; thus this application. The Applicant sets out these facts in paragraph 6 of the affidavit in support of the application.
- 32. Based on this, Court finds that the amendment will enable court to fully and finally determine all the questions in controversy thereby avoiding a multiplicity of suits.
- 33. Court is further convinced that the application has not been brought in bad faith and has no potential of occasioning an injustice to the Respondent.
- 34. The Applicant has therefore satisfied the Court that he is entitled to be granted leave to amend their memorandum of claim in the main suit.

Conclusion

- 35. In the final result, this application therefore succeeds and is accordingly allowed with orders that:
- i) The Applicant be and is hereby granted leave to amend his written statement of defence and add his counter claim.
- ii) The Applicant shall file the amended written statement of defence and counter claim within 07 days from the date of delivery of this Ruling.
- iii) The costs of this application shall abide the outcome of the main suit.

| Dated this | day of | H | 2023. |

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David Matovu JUDGE

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