

UGANDA / JUDGMENT

Mbaguta v Kasaija (Miscellaneous Application 40 of 2022) [2023]

UGHCCD 194 (28 April 2023)

[2023] UGHCCD 194

COURT

HC: Civil Division (Uganda)

BEFORE

Mugabo, J

CASE / FILE NUMBER

Miscellaneous Application 40 of 2022

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**THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT FORT PORTAL
MISCELLANEOUS APPLICATION NO. 040 OF 2022 ARISING FROM CIVIL SUIT NO.
004 OF 2021 MBAGUTA RONALD MUHWEZI ::::::::::::::::::::::::::::::::::: APPLICANT
VERSUS**

KASAIJA DONOZIO ::::::::::::::::::::::::::::::::::: RESPONDENT

BEFORE: HON JUSTICE VINCENT EMMY MUGABO RULING

This application was brought by way of Chamber Summons under Sections 33 of the Judicature Act, Section 98 of the Civil Procedure Act, Order 6 rules 19 and 31 of the Civil Procedure Rules S. I. 71-1 (CPR) seeking orders that:

- a. The Applicant be allowed to amend the plaint in Civil Suit No. 004 of 2018
- b. Costs of this Application be provided for.

Background

The applicant filed Civil Suit No. 004 of 2018 against the respondent for a declaration that the respondent is in breach of contract, payment of special damages, general damages, interest and costs. On 23/2/2022, this court ordered that a handover exercise be conducted for immovable property claimed in the main suit. The same exercise was done and based on the report of the handover, the applicant now seeks to amend the plaint to claim from properties that were not handed over to him and plead damage to some of those that were handed over.

Ruling of Hon. Justice Vincent Emmy Mugabo This Application is supported by the affidavit of Mbaguta Ronald Muhwezi, the applicant stating that upon the handover of some of the properties by the respondent, he discovered that some of the items were missing and others had been damaged. That it is important to claim for damages for the missing items and the damaged ones. That what is sought to be added in the plaint is vital in determining the real questions in controversy between the parties in the main suit.

The respondent opposed the application by the affidavit of Kasaija Donozio, the respondent. He states inter alia that;

- i. The attempt to amend the plaint is an afterthought which does not warrant an amendment
- ii. The applicant seeks to introduce new claims to the suit. For instance, the claim of UGX 1,800,000,000/- is different from the UGX 600,000,000/- already pleaded in the suit. That the weekly payments were also increased from UGX 8,125,000/- to UGX 47,375,000/- in the intended amendment.
- iii. The properties allegedly damaged were not attached and the status of the items attached was not recorded and hence the applicant's claims over the same do not justify an amendment.
- iv. If the application is allowed, it will greatly substitute the cause of action
- v. The applicant's items had been kept in hotel rooms and as such were subject to depreciation as a natural consequence

Representation and hearing

The applicant is represented Mr. Bwiruka Richard of Kaahwa, Kafuuzi, Bwiruka & Co. Advocates. The respondent is represented by Mr. Lutalo Derrick of Luzige, Lubega, Kavuma & Co. Advocates. 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

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 or omissions in substance. 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 order for an amendment of 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 *Gasos 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 alter the applicant's prayers and amount of damages claimed in the main suit. The applicant notes that he got to know about the need to do an amendment when a handover exercise was ordered by court but he discovered that some of the properties he claims for the respondent were not handed over to him and others were damaged.

Counsel for the applicant submits that the present application will not be prejudicial to the respondent since it is not intended to introduce a new cause of action outside the knowledge of the respondent or different accounts of events as laid down in the existing plaint.

Ruling of Hon. Justice Vincent Emmy Mugabo Counsel for the respondent relied on the case of *City Aluminum & Glass* *Services Ltd Vs Barclays Bank Ltd HCMA No. 884 of 2020* to lay down the principles that govern applications for amendments. He argues that the amendment should be disallowed if it changes the cause of action or if it substitutes a distinctive cause of action for another. He argues that in that case, court rejected an amendment which sought to introduce a new cause of action as the recovery of UGX 381,239,280/- which was different from the recovery

of UGX 2,854,164,879/ in the original plaint.

Counsel for the respondent also argued that the real questions in controversy between the parties can well be determined by adducing the required evidence but not by the present application for amending the plaint.

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 to enhance the amount in the applicant's claim against the respondent because of the discovery of facts that were not available to the applicant when he initially filed the suit. To me, this is an issue of evidence that may go either way. If the applicant is able to prove in the main suit that the respondent actually owes him the amount claimed, he will be successful, and if he is not able to prove the amounts claimed, his suit may not succeed. I find that this is a proper case for the grant of leave to amend the plaint in Civil Suit No. 004 of 2018.

In the ultimate result, the application succeeds. The applicant is granted leave to amend the plaint in Civil Suit No. 004 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 7 days thereafter. The costs of this application shall abide by the outcome of Civil Suit No. 004 of 2018.

Dated at Fort Portal this 28th day of April 2023.

Vincent Emmy Mugabo

Judge

The Assistant Registrar will deliver the ruling to the parties

Vincent Emmy Mugabo

Judge

28th April 2023

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