

UGANDA / JUDGMENT

Mukwano Enterprises Ltd v Seninde Miriam and Liz Kibalama (Misc. Application No. 1774 of 2024) [2025] UGCommC 85 (1 April 2025)

[2025] UGCommC 85

COURT

Commercial Court of Uganda

BEFORE

Tumusiime Rubagumya, J

CASE / FILE NUMBER

Misc. Application No. 1774 of 2024

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5 THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL DIVISION) MISC. APPLICATION NO. 1774 OF 2024

(ARISING FROM MISC. APPLICATION NO. 662 OF 2023)

10 (ALL ARISING FROM CIVIL SUIT NO. 277 OF 2019)

MUKWANO ENTERPRISES LTD ::::::::::::::::::::::::::::::::::: APPLICANT

VERSUS

1. SENINDE MIRIAM

15 2. LIZ KIBALAMA T/A LISE GENERAL

MERCHANDISE AND SUPPLIERS ::::::::::::::::::::::::::::::::::: RESPONDENTS

BEFORE: HON. LADY JUSTICE PATIENCE T. E. RUBAGUMYA RULING

20 Introduction

The application was brought by way of a Notice of Motion for orders that:

1. The Applicant be granted leave to file an appeal to the Court of Appeal against the ruling and orders of the Court allowing the Respondents to amend their plaint.

- 2. The proceedings in *HCCS No. 277 of 2019* be stayed pending the determination of the appeal.
- 3. Costs of this application be provided for.

5 Background

The background of the application is detailed in the affidavit in support of the application deposed by **Ms. Nilusha Meghani**, the Property Manager of the Applicant, and is summarised below:

- 1. That on 19th August, 2024, this Court delivered a ruling permitting 10 the Respondents to amend their plaint.
- 2. That the Learned Judge erred when she held that the new cause of action to be introduced by the amendment was envisaged in the consent judgment signed before the cause of action arose.
- 3. That the Learned Judge erred when she held that the case of *Charles James Kamoga & Another Vs AG & Others CACA No. 74 of 2002* was inapplicable after finding that the amendment would introduce 20 new prayers that were not in the original plaint upon which the consent judgment was entered.
- 4. That the Learned Judge erred when she allowed the Respondents to amend their plaint without setting aside the consent judgment.
- 5. That the Learned Judge erred when she held that the amendment did not introduce a new cause of action after she found that the amendment introduced a claim for aggravated damages and 30 increased the quantum of the initial cause of action substantially.

In reply to the application, the Respondents, through **Ms. Seninde Miriam**, the 1st Respondent, opposed the application contending that:

1. In 2019, on her behalf and that of the 2nd Respondent, she filed a suit against the Applicant seeking to recover goods wrongly detained,
 - 5 rent paid in advance and security deposit for Shop No. G.05 at Mukwano Courts that they had been renting from the Applicant.
- 2. The Applicant always denied having wrongfully detained their goods, rent paid in advance and the security deposit, until September, 2022, when they entered into a partial consent and were allowed to 10 collect their goods, rent paid in advance and security deposit from the Applicant, and what was left were the issues of damages for wrongful detention of their goods, loss of income and damages caused to the goods.

- 15 3. On 13th April, 2023, when *Civil Suit No. 277 of 2019* came up for scheduling, the Applicant's lawyer Mr. Simon Tendo Kabenge brought it to Court's attention that for the claim of damages to the goods to be included, there was need to amend the plaint hence their application to amend the plaint and the subsequent Court ruling 20 allowing the amendment in August, 2024.
- 4. At the time of filing the main suit in 2019, they sought to recover the goods wrongfully detained by the Applicant, UGX 4, 628,000/= being rent paid in advance and USD 610 being the security deposit paid to 25 the Applicant and interest on the same. That upon the execution of a partial consent judgment, they were allowed to collect their goods in September, 2022 and were also given the rent paid in advance and the security deposit which necessitated the amendment of the plaint since at the time of collection, they realised the state the goods were 30 in, having been detained for about 4 years.
- 5. The Learned trial Judge rightly ruled that the amendment of the residual claim was envisaged by the partial consent judgment executed by the parties.
- 5 6. The partial consent judgment executed by the parties under clause 4 stated that costs of the suit and any other residual claims would be left to the discretion of the Court, thus negating the need to set aside the partial consent order before allowing the Respondents to amend their plaint.
- 10
- 7. The residual claim of aggravated damages among others is as a result of the damage caused to their goods which the Applicant had in their custody, retention of their security deposit and rent paid in advance despite the repeated demands for the same for about 4 years making 15 the same residual claim from the initial claim.

In rejoinder **Ms. Nilusha Meghani** reiterated her averments and added that:

- 1. The Respondents filed a plaint vide *Civil Suit No. 277 of 2019* in which their claim under paragraph 3 was for recovery of UGX 20 4,628,000/= being rent paid in advance, USD 610 being the security deposit, goods estimated to be worth 62,000,000/=: general damages for wrongful detention of the goods and interest.
- 2. Soon thereafter, the parties entered into a partial consent judgment 25 wherein paragraph 4 stipulated that the costs of the suit and all residual claims arising from *Civil Suit No. 277 of 2019* would be left to the Court's discretion.
- 3. The partial consent judgment has never been set aside by either 30 party.
- 4. By the Learned trial Judge permitting the Respondents in *Misc. Application No. 662 of 2023* to amend their plaint, the Respondents introduced a claim of UGX 62,000,000/= to their

5 amended plaint, which does not qualify as a residual claim under the original plaint to which the consent was made.

Representation

The Applicant was represented by **M/s Simon Tendo Kabenge (Stek) Advocates** while the Respondents were represented by **M/s Kasolo & 10 Khiddu Advocates**.

The parties were directed to file their written submissions, which they did, and the Court has considered the same.

Issues for Determination

Following **Order 15 rule 5(1) of the Civil Procedure Rules** and the case

- 15 of **Oriental Insurance Brokers Ltd Vs Transocean (U) Limited SCCA No. 55 of 1995,** this Court rephrased the issues to read as follows:
- 1. Whether the Applicant satisfies the conditions for the grant of leave to appeal?
- 20 2. Whether the Applicant is entitled to the remedies sought?

Issue No.1: Whether the Applicant satisfies the conditions for the grant of leave to appeal?

Applicant's submissions

Learned Counsel cited **Section 76 of the Civil Procedure Act, Cap. 282 25** and **Order 44 rule 2 of the Civil Procedure Rules** as the enabling law for this application. He also quoted the cases of **Sango Bay Estate Ltd & Others Vs Dresdner Bank AG [1971] EA 17** and **Ayebazibwe Raymond Vs Barclays Bank Uganda Ltd & 3 Others, HCMA No. 292 of 2014**, for the proposition that before leave to appeal is granted, the Applicant has to

5 demonstrate that there are grounds of appeal which merit serious judicial consideration.

To that, Learned Counsel referred to paragraph 3(a), (b), (c) and (d) of the affidavit in support, contending that it demonstrates the grounds of appeal with a high likelihood of success. Learned Counsel contended that the 10 appeal intends to examine whether a Judge can permit a party to a signed partial consent judgment to amend their claim without setting aside the consent judgment. Learned Counsel referred to the case of **James Mark Kamoga & Another Vs Attorney General & Others (supra)** that set out

grounds for setting aside a consent judgment.

15 Learned Counsel submitted that the residual claims in the partial consent judgment were residual claims in the plaint on the record as of the date of the consent judgment. Further, that introducing a new plaint by amendment created new claims that did not exist and were not considered or envisaged by both parties at the date of execution of the consent 20 judgment, which amounts to varying or setting aside the consent judgment.

Respondents' submissions

Learned Counsel for the Respondents first relied on the cases of **Sango Bay Estate Ltd & Others Vs Dresdner Bank AG (supra)**, **Musa Sbeity* 25 *and Another Vs Akello Joan HCMA No. 249 of 2018** as relied on in **Uganda Free Zones Authority & Another Vs Clare S. Kaweesa Misc. Application No. 581 of 2021** and **Ayebazibwe Raymond Vs Barclays Bank Uganda Ltd & 3 Others (supra)** for the principles regarding leave to appeal.

5 Learned Counsel submitted that in its application, the Applicant did not demonstrate that there are serious grounds of appeal with a likelihood of success that require serious judicial consideration on appeal.

Referring to paragraph 3 of the affidavit in support and the amended plaint, Counsel referred to paragraph 4 of the partial consent judgment 10 that provides that the cost of the suit and any other residual claims shall be left to the discretion of the Court. He also relied on **Order 6 rule 19 of the Civil Procedure Rules**, which permits the Court to allow amendments. Counsel argued that the Applicant's contention that the amendment introduced a new claim is baseless as the amendment 15 concerned the extensive damage to the Respondent's goods that they had discovered.

Learned Counsel further argued that the intended appeal emanates from a decision of this Court allowing an amendment in exercise of a judicial discretion and that the Applicant is required to make a stronger case which

20 it has failed to do and hence, the application ought to be dismissed.

Analysis and Determination

This is an application seeking leave to appeal against the ruling of **Hon. Lady Justice Anna B. Mugenyi** in **Misc. Application No. 662 of 2023** arising from **Civil Suit No. 277 of 2019**, dated 19th August, 2024. The 25 brief facts of the application are that;

The Respondents vide **Civil Suit No. 277 of 2019** instituted a suit against the Applicant seeking recovery of goods wrongfully detained by the Applicant, UGX 4,628,000/= being rent paid in advance and USD 610, being the security deposit paid to the Applicant and interest on the same.

- 5 On 12th September, 2022, the parties entered into a partial consent judgment wherein the Respondents were to collect and take their goods in the custody of the Applicant, the Applicant was to pay the Respondents UGX 4,628,000/= and USD 610, in cash being part of the Respondents' claim in the suit for rent overpaid and security deposit. The costs and any
- 10 other residual claims were left to the discretion of the Court. Upon picking up the goods from the Applicant, the Respondents discovered that some goods were damaged and others lost, and to that, vide **Misc. Application No. 662 of 2023**, they sought leave of Court to amend the plaint, which was granted. Aggrieved by the said ruling, the Applicant filed this 15 application.

Leave to appeal is provided for under **Order 44 rule 1(2) of the Civil Procedure Rules**, which stipulates that:

"*An appeal under these rules shall not lie from any other order except with leave of the Court making the order or of the Court to* 20 *which an appeal would lie if leave were given*."

I do agree with the submissions of both Counsel on the case of *Sango Bay Estate Ltd and Others Vs Dresdner Bank AG* (*supra*),* which sets out principles upon which the Court can grant an application for leave to appeal. In this case, it was stated that:

25 "... leave to appeal from an order in civil proceedings will normally be granted where prima facie it appears that there are grounds of appeal which merit serious judicial consideration*..."

An order granting leave to appeal is discretionary and cannot be granted just because the Appellate Court might arrive at a different decision. 30 Therefore, before this Court grants this application, it has to satisfy itself

- 5 that there are sufficient grounds. The focal consideration for such an application is whether prima facie, there are grounds of appeal which merit serious judicial consideration and that the appeal has a reasonable chance of success.
- In the instant case, the Applicant's grievance is that the Learned trial 10 Judge permitted an amendment of the plaint for the Respondents to add a prayer for recovery of the value of goods that were discovered damaged after the execution of a partial consent judgment.

As to whether the above ground is sufficient to grant leave to appeal, I have considered the statutory law and the precedents in this aspect. As stated

15 in the case of *Olweny Patrick & 2 Others Vs Oyoo Lungino & 3 Others Civil Appeal No. 0032 of 2018*;

"*The interlocutory appeal provisions under Order 44 of the Civil Procedure Rules were enacted precisely so that difficult legal issues of significant importance could receive appellate* 20 *consideration before the conclusion of the trial. The regime for interlocutory appeals was not designed to cater for appeals against routine procedural and evidentiary rulings, not determinant of the rights of the parties, made in the ordinary course of trial*."

In that case, **Hon. Justice Stephen Mubiru** while relying on the cases of 25 *Ex parte East and West India Dock Co. H. L (1882) 7 AC 591, In Re Clerke [1881] 17 Ch. D.759 at 766, Kemper Reinsurance Co. Vs Minister of Finance and Others [2000] 1 AC 1 and In Re Poh [1983] 1 WLR 2*, also stated that:

"*In cases where the question relates only to exercise of discretion* 30 *(not involving a point of law), leave should generally be refused*."

5 In the instant case, as observed above, and in annexure "A" attached to the affidavit in reply, the consent signed by the parties was a partial judgment that only resolved part of the Respondents' claim. As reflected under paragraph 4 of the consent judgment, the costs and any other residual

claims were left to the discretion of the Court. According to 10 annexure "A" attached to the affidavit in support, the ruling in **Misc. Application No. 662 of 2023**; the Learned trial Judge reasoned that, since the suit was pending hearing for the determination of the remaining claims and the amendments stemmed from the eviction and subsequent detention of the goods, and not a distinct new cause of action, she 15 exercised her discretion and granted the amendment.

Though I am considerate of the fact that the grant of leave is necessary to protect the Applicant's right of appeal and for attaining the ends of justice as seen in **Sango Bay Estate Ltd and Others Vs Dresdner Bank AG* (*supra*)*, the grounds as raised by Learned Counsel for the Applicant, 20 together with the Court record are not sufficient to merit the grant of this application as the Applicant has an opportunity to raise a defence against the Respondents' claims. This right was already exercised by filing an amended written statement of defence on 24th September, 2024.

As to whether the appeal has reasonable chances of success, it is trite that 25 leave to appeal will be granted where it is considered that the appeal has a prospect of success or there is some compelling reason why the appeal should be heard. Lord Woolf, MR, in **Swain Vs Hillman [2001]1 All ER 91** noted that;

"A real prospect of success means that the prospect for success* 30 *must be realistic rather than fanciful. The Court considering a prospect for permission is not required to analyse whether the*

- 5 *grounds of the proposed appeal will succeed, but merely whether there is real prospect of success*." (See also **Degeya Trading Stores (U) Ltd Vs Uganda Revenue Authority Court of Appeal Civil Application No.16 of 1996**)."
- This application arises from the Applicant's dissatisfaction with the 10 amendment of the plaint in **Civil Suit No. 277 of 2019**. The said amendment added prayers for recovery of the value of the damaged goods that were in the Applicant's custody before the execution of the partial consent judgment. The amendment did not alternate or interfere with the orders in the consent judgment in issue as found by the Learned trial 15 Judge, and the Applicant had an opportunity to file a defence against the Respondents' prayers.

Considering the above, it is my considered view that the Applicant has not proved that there is a substantial question or arguable points of law with a prospect of success which merit serious judicial consideration. This 20 Court therefore finds that this is not a proper case for grant of leave to

appeal. Accordingly, this application is dismissed.

The costs of this application shall be in the cause.

I so order.

Dated, signed and delivered electronically via ECCMIS this 1st day of April,

25 2025.

Patience T. E. Rubagumya **JUDGE** 1/04/2025

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