

UGANDA / JUDGMENT

# Nyanzi Sam v Daisy Lwanga Namirembe (Miscellaneous Application 3123 of 2023) [2024] UGHCLD 39 (13 February 2024)

[2024] UGHCLD 39

## COURT

HC: Land Division (Uganda)

## BEFORE

Naluzze Aisha Batala, J

## CASE / FILE NUMBER

Miscellaneous Application 3123 of 2023

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THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT KAMPALA LAND  
DIVISION MISCELLANEOUS APPLICATION NO. 3123 OF 2023 \*(ARISING FROM  
CIVIL SUIT NO. 926 OF 2023)\*

NYANZI SAM ::::::::::::::::::::::::::::::::::: APPLICANT

VERSUS

DAISY LWANGA NAMIREMBE ::::::::::::::::::::::::::::::::::: RESPONDENTS

BEFORE: HON. LADY JUSTICE NALUZZE AISHA BATALA RULING.

**\*Introduction:\***

- 1. This was an application by notice of motion brought under Article 126 of the Constitution of Uganda, Section 98 of the Civil Procedure Act, Section 33 of the Judicature Act Cap 13, and Order 6, Order 8 rule 18 (1) & (2) and Order 52 rules 1 & 3 of the Civil Procedure Rules (CPR) for orders that:
  - i) The amended plaint filed on the 27th day of September 2023 be struck out for being improperly before this Honorable Court.
  - ii) The costs of this application be provided for.

**\*Background;\***

2. The Respondent/Plaintiff instituted Civil Suit No. 926 of 2023 on 17th August 2023. The summons to file a defence were served and the Applicant filed her written statement of defence on 6th September 2023. The Respondent filed a reply to the written statement of defence on 18th September 2023 and after he filed an amended plaint on 27th September 2023 which the applicant now challenges for being improper before Court.

**\*Applicant's evidence;\***

- 3. The grounds of the application are contained in the affidavit in support of the application deposed by NYANZI SAM the Applicant, and are briefly that:
- i) That the Respondent did not seek leave of Court to file the amended plaint as required under the law and that the amended plaint introduced new facts to the suit.
- ii) That the amended plaint is improper before Court and it's in the interest of justice and equity that this application is allowed and the amended plaint struck out with costs.

**\*Respondent's evidence;\***

- 4. The application is opposed to by an affidavit in reply deposed by DAISY LWANGA NAMIREMBE the respondent which briefly states as follows;
- i) That the amended plaint does not offend Order 8 rule 18 (1) and (2) since it was filed within the prescribed time lines as provided by the Civil Procedure Rules.
- ii) That she had the right to file the amended plaint since the last defence was filed on the 28th of October 2023 by Waiswa Jonah the 2nd defendant.
- iii) That this Honourable Court issued fresh summons on the 17th day of October 2023 which further extended time within which to file the amended plaint without seeking leave from Court.
- iv) That the new facts must be specifically pleaded especially if they denote on illegalities and fraud to avoid taking the opposite party by surprise.

**\*Representation;\***

- 5. The Applicant was represented by Mr. George Muhangi of M/s MBS Advocates whereas there was no representation from the respondent.
- 6. Both parties filed their affidavits and written submissions which I have considered in the determination of this application.

**\*Issues for determination;\***

- \*i) Whether the amended plaint filed on the 27th day of September 2023 should be struck out for being improperly before this Honourable Court?\*
- \*ii) What remedies are available to the parties?\*

**\*Resolution and determination of the issue;\***

- 7. The rules of procedure allow a party to correct any error or cure any defect or include any omission through amendment of pleadings.
- 8. The object is to enable the parties to alter their pleadings so as to ensure that the litigation between them is conducted not on the

false hypothesis of fact already pleaded or relief or remedy already claimed but rather on the basis of true state of facts or true relief or remedy which the parties rely and finally intend to rely on or to claim.

- 9. Order 6 rule 19 of the Civil Procedure Rules provides that the Court may at any stage of the proceedings allow either party to alter or amend his/her pleadings in such a manner and such terms as may be just and all such amendments shall be made as may be necessary for the purpose of determining the real question in controversy between the parties.
- 10. 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. (Sarah

**Nyakato v Lin Jeng Liang aka Lin Jeff MA No. 316 of 2022)**

- 11. The recognized principles governing the exercise of discretion in allowing amendment of pleadings are as follows;
- \*i. That 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. Multiplicity of proceedings should be avoided as far as possible and all amendments, which avoid such multiplicity, should be allowed.\*
- \*iii. An application 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 (Gasco Transport Services Limited v Marti Adala Obene SCCA 4 OF 1994 [1994] VI KALR 5)\*

- 12. However, Order 6 rule 20 of the Civil Procedure Rules provides that a plaintiff may, without leave, amend his or her plaint once at any time within twenty-one days from the date of issue of the summons to the defendant or, where a written statement of defence is filed, then within fourteen days from the filing of the written statement of defence or the last of such written statements.
- 13. Order 8 rule 18 (1) of the Civil Procedure Rules provides that a plaintiff shall be entitled to file a reply within fifteen days after the defence or the last of the defences has been delivered to him or her unless the time is extended. \*Order 8 rule 18 (2) of the Civil\*

**\*Procedure Rules provides that no pleading subsequent to the\***

**\*reply shall be filed without leave of Court, and then shall be filed only upon such terms as the Court shall think fit. (emphasis mine)\***

- 14. Learned Counsel for the Respondent submitted that the last defence was filed on 28th October 2023 by the 2nd defendant and therefore the amended plaint was filed within time permitted by the law. This Honourable Court notes that the said defence was filed by the 2nd Defendant in the main suit in respect of the amended plaint the legality of which is being challenged before this Honourable Court.
- 15. From the reading of the provisions of Order 6 rule 20, Order 8 rule 18 (1) & (2) of the Civil Procedure Rules, the Respondent/ plaintiff had an option to file an amended plaint without leave of Court with in the timelines stipulated under Order 6 rule 20 but he instead chose to file a reply to the 1st Defendant's written statement of defence.
- 16. It is my considered view that the plaintiff/ respondent had relinquished his right to amend the plaint without leave of Court the moment he filed a reply to the 1st Defendant's written statement of defence and therefore the subsequent pleadings after

the reply to the 1st Defendant's written statement of defence were illegally filed because the Respondent/Plaintiff ought to have sought leave of Court prior to filing the amended plaint.

- 17. It is the finding of this Honourable Court that the amended plaint was illegally filed, the same is irregular and improper before this Honourable Court and it is therefore struck out.
- 18. For those reasons, the Application succeeds and the amended plaint is hereby struck out with costs to the Applicant.

**I SO ORDER.**

**NALUZZE AISHA BATALA**

**JUDGE**

**13/02/2024**

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