

UGANDA / JUDGMENT

Oseku v Kabyanga (Civil Suit 1152 of 1986) [1992] UGHC 60 (2 April 1992)

[1992] UGHC 60

COURT

High Court of Uganda

BEFORE

Kireju, J

CASE / FILE NUMBER

Civil Suit 1152 of 1986

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THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT KAMPALA CIVIL SUIT NO. 1152 OF 1986

A. OSEKU

C/O I-I/S Mulenga & Kalemora Adv, Kia. :R2SR0NDEHT/PLAINTIFF

VERSUS

C. KABYANGA J: : ^DEFEND^A NT'. BEFORE: The Honourable
firs. Ag. Justice M« Kireju. ^R ULI NG.

When this application canto up for hearing, Fir. Alex Rezida, counsel for the applicant/defondant applied to this court to be allowed to proceed exparte. His application was grounded on the fact that the application had been fixed by consent of parties and no information has been received from the chambers of M/S Mulenga^ Karemera Advocates, counsel for the respondent/plaintiff for their non appearance.

After satisfying¹ myself that this application was fixed by consent of parties by ^a letter dated ¹¹ /3/92, I allowed the application to be heard exparte.

This application is brought by way of chamber summons under Or. ⁶ r. 18, and JO of C. P. R and S.101 of Civil Procedure Act. The defendant's counsel seeks leave of court to amend the written statement of defence. The application is supported by an affidavit sworn by the applicant Clovis Kabyanga dated 27/11/91 and an additional affidavit in rebuttal dated 25/2/92.

The main grounds of this application are that, the respondent/ plaintiff confiscated ^0 (fourty) empty crates of soft drinks

from the applicant/defendant in distress for rent. That the plaintiff offered to return the empty - as part of the process for settlement but later refused and that it is necessary to amend the written statement of defence if all the matters in the suit are to be effectually resolved*

There is also an affidavit in reply where the plaintiff deponed that the crates of soda have nothing to do with this suit, as they were deposited by the defendant with ^a company "called ^m/^s Nyakoi Enterprises Ltd. of which the plaintiff is ^a/^{shareholder} That the defendant is trying to drag in the issue of empty crates of soda in order to cloud the real issues in this suit which arise out of breach of tenancy agreement. He deponed that the need to amend was frivolous and vexatious and prayed that the application be dismissed-

Mr. Rezida in support of this application submitted that the head suit is about the recovery of unpaid rent, damages for bad state of repair in respect of the plaintiff's house in which the applicant resided as a tenant* He submitted that the applicant's empty crates were confiscated by the plaintiff in distress for rent as deponed by the applicant in his affidavit'. In response to the affidavit in reply counsel submitted that the plaintiff was trying to disassociate the ^0 crates of soda from this suit namely that the defendant had dealt with Nyakoi Enterprises Ltd. and not the plaintiff in his personal capacity. However the applicant insisted that he never dealt with the said company and did not know of its existence. Counsel also referred to Annexure 'A' to the affidavit in which the respondent's counsel had informed the applicant's counsel that they had no objection to returning the crates of soda empties as long as the applicant liquidated his indebtedness to their client. That from the said annexure ⁷³

the crates were taken by the plaintiff and he was willing to return them.

Counsel for the applicant also submitted that it was necessary to amend the written statement of defence in view of the alleged state of disrepair which was negligently left out by the former counsel for the applicant. In conclusion counsel submitted, that this was a bonafide application and that the amendment is necessary for the purpose of determining the real questions in issue, as it would be unfair for a landlord to hold the tenant's property for distress for rent and also try to recover the rent by way of suit. That the amendment would not cause any injustice to the respondent as it is brought in at an early stage before the hearing of the suit has commenced. He referred me to the case of Joseph Nsereko vs. Haji Taibu Lubega & Another 1982 HCB 51 in support of his application. He prayed that the application be allowed and costs be in the cause.

I have considered carefully the submission by counsel, studied the affidavits in support of the application and the authority referred to me, I have also carefully perused the respondent's affidavit in reply. The principle to be applied when considering applications to amend pleadings before hearing is well stated in the case of Eastern Bakery vs. Castellino 719587 EA 461. Where court of Appeal for Eastern Africa held that

> " amendments to the pleadings sought <pre>before the hearing should be freely</pre> allowed if they can be made without injustice to the other side, and there is no injustice if the other side can be compensated by costs"

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Applying the above principle to the present application the question now is whether any injustice will be caused to the

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respondent by allowing the amendernent. The respondent's main objection to the proposed amendment is that the o~r<tes of soda should not be included in this suit as they were given to a company by the defenda:it and not to the plaintiff. As far as I am concerned, I think this is an issue which can bo sorted out at the trial of the main suit. However, .in the present application I do not believe that the respondent will suffer injustice by reason of the amendments sought. I therefore give leave to counsel for the applicant to amend the written statement of defence as applied for and the applicant/defendant is given ¹⁴ days within which to file his amended statement of defence. The costs of this application ire to be in the

cause.

>•(? - M. KIREJU ¹

A«. JUDGE. 2/4/92

2/4/92

Ruling delivered before

Mr. Rezida - Counsel for the applicant

Mr. Oburu - Court clerk.

A. , M. KIREJU ^V

Ag. J ^U ^D ^G E. a/4/92

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