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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

COMMERCIAL DIVISION

MISCELLANEOUS APPLICATION NO. 240 OF 2020

[Arising from Civil Suit No. 231 Of 2017]

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ELLEN CHEN ..... APPLICANT

VERSUS

BYAMUGISHA STANLEY ..... RESPONDENT

BEFORE: HON. JUSTICE DR. HENRY PETER ADONYO


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RULING

1. Background:

This application was brought by chamber summons under section 98 of the Civil Procedure Act, Order 6 rules 19 and 31 and Order 1  
20 Rules 1, 3 and 13 of the Civil Procedure Rules SI 71-1 for orders that leave be granted to the Applicant to amend her counter claim to add


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5 Pujiang Charmer Industry and Trade Company Limited as the 2<sup>nd</sup>  
Counter claimant and Triple A Enterprises Limited as the 2<sup>nd</sup> Counter  
Defendant for the purposes of determining the real questions in  
controversy between the parties and for costs to be in the cause.

The grounds of the application are that;

- 10 i. The Applicant is one of the directors of Pujiang Charmer  
Industry and Trade Company, a Chinese based Company
- ii. That the Applicant and Respondent were business partners  
from 2015 to 2017 when their business relationship fell on  
the rocks
- 15 iii. That during the subsistence of the business relationship  
between the Applicant and the Respondent, the Respondent  
introduced Triple A Enterprise Limited as the consignee to  
which the goods should be sent
- iv. That the Applicant on behalf of Pujiang Charmer Industry  
20 and Trade Company Limited supplied goods to the  
Respondent through Triple A Enterprise Limited are the  
subject matter of the counter-claim in Civil Suit No. 231 of

  
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5           2017 which was filed in this honourable court on The 18<sup>th</sup>  
April 2017.

- v.   That the addition of Pujiang Charmer Industry and Trade  
Company Limited and Triple A Enterprises Limited as a  
counter claimant and counter defendant respectively is  
10       necessary for the purposes of determining the real questions  
in controversy between the parties
- vi.   That the addition of Pujiang Charmer Industry and Trade  
Company Limited and Triple A Enterprises Limited as  
Counter claimant and counter defendant respectively is  
15       necessary for the purpose of determining the real questions  
in controversy between the parties
- vii.   That this application has been made before the hearing has  
commenced and therefore no prejudice will be caused to the  
Respondent if it is allowed by this honourable court
- 20   viii.   That this application is brought with the sole purpose of  
avoiding multiplicity of suits over the same subject matter

This chamber summons is supported by an affidavit of sworn by Ms.  
Ellen Chen details of which are on record.

  
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5      2. Applicant's submissions:

The Applicant's submissions are that between 2015 and 2017 the Applicant and Respondent were business partners and that during the subsistence of the business relationship the Respondent introduced Triple A Enterprise Limited as the consignee to which  
10 goods should be sent.

That the Applicant on behalf of Pujiang Charmer Industry and Trade Company Limited supplied goods to the Respondent through Triple A Enterprises Limited.

It was submitted that the Applicant, while acting through Pujiang  
15 Charmer Industry and Trade Company Limited supplied goods to the Respondent through Triple A Enterprises Limited as reflected in the invoices.

That the Applicant and Respondent during the subsistence of their business relationship were acting for themselves and on behalf of  
20 Pujiang Charmer Industry and Trade Company Limited and Triple A Enterprises Limited respectively and that a dispute arose between the parties with a suit filed between the two companies where similar questions of law and fact arose as those raised in Civil Suit No. 231

5 of 2017 where a counter claim has been filed against the Respondent necessitating bringing on board all parties.

That this application has been made wherein the Applicant sought the discretion of court to add parties who were left out in the counterclaim with no prejudice to be occasioned to the Respondent  
10 were this application to be allowed.

In support to this position, the Applicant cited the Supreme Court decision in **Gasu Transport Services (Bus) Limited vs Martin Adala Obene SCCA NO. 4 of 1994** wherein were laid principles recognised as governing the exercise of discretion in allowing  
15 amendments which are that;

- i. The amendments shall not work injustice to the other side.
- ii. An injury which can be compensated by the award of costs is not treated as an injustice.
- iii. Multiplicity of proceedings should be avoided as far as possible  
20 and all amendments which avoid multiplicity should be allowed.
- iv. An application which is *mala fides* should not be granted.
- v. No amendment should be allowed where it is expressly or impliedly prohibited by any law e. g. limitation of action.

5 The Respondent did not file any submissions. This ruling is thus  
made on the basis of the pleadings of the parties, the affidavits in  
support thereof, the law applicable and the facts of this matter.

3. Decision of Court:

This application is brought under Order 6 rule 19 of the Civil  
10 Procedure Rules which provides that;

***“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, and her  
pleadings in such manner and on such terms as may be  
15 just, and all such amendments shall be made as maybe  
necessary for the purpose of determining the real  
questions in controversy between the parties.”***

Additionally, Order 1 rules 1 and 3 of the Civil Procedure Rules  
provides for the parties who may be joined as it states that “ *all  
20 persons may be joined in one suit as plaintiffs in whom any right to  
relief in respect of or arising out of the same act or transaction or series  
of acts or transactions is alleged to exist, whether jointly, severally or*

  
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5 *in the alternative, where, if those persons brought separate suits, any  
common question of law or fact would arise.*

Furthermore, Order 1 rules 2 of the Civil Procedure Rules provides  
for persons who may be joined as defendants stating that a person  
may be joined as a defendant if such persons is one against whom  
10 any right to relief in respect of or arising out of the same act or  
transaction or series of acts or transactions is alleged to exist,  
whether jointly, severally or in the alternative, where, if separate suits  
were brought against those persons, any common question of law or  
fact would arise.

15 Given the above position of the law and the fact of this matter, it  
would appear to me from the Applicant's submissions in the main  
there existed a business connection between the alleged parties to be  
joined which connection had turned sour resulting in the dispute  
currently pending in court with the need to bring all the disputant  
20 parties on board through the proposed amendment of pleadings  
which it is alleged would not change the character of the suit and or  
introduce a new claim.

  
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5 In the case of ***Kayondo Muhammed and 3 Others vs the***  
***Administrator General and 2 Others Miscellaneous Application***  
***No. 628 of 2016*** the import of provisions under Order 1 rules 1 and  
3 of the Civil Procedure Rules were noted that an application to  
add a party could be by any of the parties or could be done by the  
10 court on its own motion or by any person where it seen that a legal  
right may be directly affected by the grant of the relief claimed in the  
action if it can be shown that the presence of a person to be added is  
necessary so as to enable the court to effectively and completely  
adjudicate or settle a suit before it if the aim was to bring on record  
15 all persons who may be considered as parties if they are related to  
the subject matter before court so that the dispute in question may  
be determined in their presence without any procrastination,  
inconvenience and in the avoidance of multiplicity of proceedings.

Therefore, when the instant matter is placed under the above  
20 perspective, it is clear to me that indeed business transactions did  
occur between the proposed parties wherein the supply of goods and  
receipt of were made between alleged business partners between  
2015 and 2017 and that the instant Respondent introduced a



5 company by the names of Triple A Enterprises Limited into the  
relationship as a consignee to which goods could be sent and that  
during the pendency of the said relationship disputes arose resulting  
into the filing of civil suit No. 231 of 2017 inclusive of a counterclaim  
in it which would invariably means that without some of the parties  
10 involved in the transactions there would likely be a miscarriage of  
justice.

Arising from the above facts therefore, it is clear to me that indeed  
there were some business transactions between the parties which  
soured resulting in the dispute currently before this court which by  
15 its nature would require the bringing on board all concerned parties  
if this court were to ensure that all matters in controversy between  
parties are subsequently determined at once so as to avoid  
multiplicity of suits.

Given these facts, I would presume that this instant application is  
20 brought in order to comply with the requirements of the decision  
above leaving me to be convinced that that this is a fitting matter in  
which all alleged parties ought to be brought on board in a single suit  
if only to avoid multiplicities of suits since the interests of the parties

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5 appear to the same and are currently at crossroads with the justice  
in the matter requiring that this matter be brought to its finality by  
bringing on board all the relevant parties to be joined to the main suit  
as it is only proper that the plaintiff be allowed to bring on board  
whomever he or she think fit for the obtaining of the reliefs sought.


10 Therefore, given the fact that the Respondent did not even object for  
it never placed its submissions in opposition in spite of being served  
through counsel on record of M/s Mark Mwesigye and Co. Advocates  
on the 24<sup>th</sup> March 2020, I would find that on the basis of the  
justification presented by the applicant for this application, the best  
15 conclusion this court would arrive at is that this is a proper case for  
necessary parties to be added in order to ensure the finality of the  
dispute between the parties.

Based on the findings and reasons above, I am inclined to allow this  
application with orders as below.

20 4. Orders:

- a. This application is allowed with the Applicant directed to effect  
the necessary amendments to the pleadings so as to bring on  
board the necessary parties which would enable this matter to

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proceed to completion without multiplicity of proceedings with  
summons to such parties made within 15 days from the date of  
this ruling.

b. Costs will be in the cause.

I so order.

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 *Hon. Justice Dr. H. P. Adonyo*  
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Hon. Dr. Justice Henry Peter Adonyo

Judge

13<sup>th</sup> October 2020

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