

**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT JINJA**

**MISCELLANEOUS APPLICATION No. 49 OF 2017  
(ARISING OUT OF MISCELLANEOUS CAUSE No. 39 OF 2016)**

**IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW SEEKING THE  
PREROGATIVE ORDERS OF MANDAMUS, CERTIORARI, PROHIBITION AND  
INJUNCTION**

**ODOMOCH DIANA KIWANUKA ===== APPLICANT**

**VERSUS**

**JINJA DISTRICT LOCAL GOVERNMENT ===== RESPONDENT**

**BEFORE HON. JUSTICE MICHAEL ELUBU**

**RULING**

The Applicant, **ODOMOCH DIANA KIWANUKA** brings this application against the respondent, **JINJA DISTRICT LOCAL GOVERNMENT** for orders that:

- a) The applicant is granted unconditional leave to amend her application for judicial review and this accompanying affidavit.
- b) Costs be provided for.

The Applicant proceeds under S.98 of The CPA and O.6 r 19 and 31 of The CPR.

The background to this application is that the applicant had filed M.A. No. 39 of 2016 for judicial review. When the matter came up for hearing learned counsel for the applicant, John Isabirye, sought to make an oral application to amend her notice of motion and its accompanying affidavit.

Ahanya Sam, Learned Counsel for the Respondent, objected stating such an application should be formal and as such court should reject the oral application. The present application was subsequently filed by the applicant as a result of the objection.

The gist of the matter is that the applicant seeks to amend paragraph 'd' of the grounds in the Notice of Motion and paragraphs 3 and 11 of the affidavit in support of the main application for judicial review. She avers that the said paragraphs bear typographical errors which this application seeks to rectify.

From the reply, the respondent is opposed only to the amendment sought in paragraph 11 of the affidavit in support of the application.

Paragraph 11 in its original form reads;

That on the 27<sup>th</sup> May 2016 I received a letter from the Chief Administrative Officer of the Respondent transferring me from my current station which I politely turned down in writing detailing reasons for my non acceptance of the same (Refer to Annex H)

The applicant seeks to change the date of receipt of the letter mentioned in paragraph 11 of the affidavit in support of the application for judicial review from 27<sup>th</sup> May 2016 to 17<sup>th</sup> of June 2016.

The respondent through an affidavit sworn by our NAKYANZI OLIVE HOPE avers that they are opposed to this amendment because the applicant did not receive the letter on the 17<sup>th</sup> of June as alleged but on the 2<sup>nd</sup> of June 2016 which is the date she acknowledged receipt. The applicant refused to vacate office and denied receipt of the letter which prompted the respondent to send a second letter on the 16<sup>th</sup> of June 2016. Receipt was acknowledged by the applicant on the same day as a second delivery.

It is therefore deposed that the applicant did not ever receive a letter on the 17<sup>th</sup> of June 2016. For that reason the Respondent contends that the amendment is in bad faith, and that the affidavit in support of this application is false and should be rejected by the court.

The Applicant in rejoinder has denied ever receiving the so called first dispatch and challenges the respondent to produce proof of her acknowledgement of the letter. She states that the respondents tampered with the impugned letter inserting a wrong date of receipt and the words 'second delivery.

The parties in this matter were granted leave to file written submissions which are on the court record and as such I shall not reproduce here but will closely refer to them as I proceed.

The amendment of pleadings is regulated by **O.6 r 19 of the Civil Procedure Rules** which provides that; Order 6 r 19

*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 all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties.*

The above rules can be summarized in principals stated by the Supreme Court of Uganda in **Gasu Transport Services (Bus) Ltd vs Obene (1990-1994) E.A 88** and they are,

- i) The amendment should not work injustice to the other side. An injury which can be compensated by an award 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 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 (for example limitation actions)”

It should be added that to say that amendments to pleadings sought before the hearing should be freely allowed if they conform the above stated principles (see **Eastern Bakery v Castelino [1958] EA 461**)

Applying these principles to the present case the applicant states that she merely wishes to correct typographical errors and the respondents vehemently oppose this. It is stated that the applicant has in fact told deliberate lies in her affidavit and that is why she has not attach proof of receipt of the letter on the 17<sup>th</sup> of June 2016.

To my mind it appears that the date of receipt of the letter is a most contentious part of this dispute. It involves the parties contesting the versions put forward by each of them. It would therefore be crucial that these facts are properly tested in the judicial process.

This is a court of law and the purpose of an amendment should be to enable justice between the parties to be done by properly determining the real questions in controversy between them. To that end, and because the question of the date of receipt of the letter is contested, it should form part of the main application, and not resolved at this stage in this application for amendment.

In my view the respondents should not be prejudiced in any way if this order is granted as they have every opportunity to test any averments made by the applicant for their veracity during the hearing.

For these reason the application for amendment is hereby granted with costs.



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**MICHAEL ELUBU**

**JUDGE**

**15/08/2017**

