



IN THE HIGH COURT OF UGANDA SITTING AT GULU

Reportable
Misc. Civil Application No. 0043 of 2020

In the matter between

ONEKGIU SARAFINO

APPLICANT

And

- 1. TOKWINY ISAAC**
- 2. OLOYA JUSTINE**
- 3. NYEKO DAVID**
- 4. LUWUM CHRISTOPHER**
- 5. OKWERA SANTO**

RESPONDENTS

Heard: 23 June, 2020.

Delivered: 23 July, 2020.

Civil Procedure —Amendment of Pleadings — Order 6 rules 9, 18 and 31 of The Civil Procedure Rules — Gives the Court a wide discretion to allow either party, at any stage of proceedings, to alter or amend his or her pleadings in such a manner and on such terms as may be necessary for the purpose of determining the real question in controversy as between the parties. —The paramount guiding principle in the exercise of this discretion is that the intended amendment should enable court to determine the real questions in controversy between the parties, without causing injustice to the other party. Prejudice which can be compensated by the award of costs is not an injustice — Multiplicity of proceedings should be avoided as far as possible and all amendments which avoid such multiplicity should be allowed.

RULING

STEPHEN MUBIRU, J.

Introduction:

- [1] This is an application under the provisions of Order 6 rules 19 and 31 of *The Civil Procedure Rules*, seeking leave to amend pleadings filed by the applicant in Miscellaneous Civil Application No. 158 of 2019 that sought to have Civil Appeal No. 19 of 2019 reinstated. The application is premised on the ground that the applicant was self-represented when he filed the application and as a result omitted material particulars of fact that he now desires to incorporate. It is contended that the facts sought to be introduced by amendment are necessary for the proper determination of the matters in controversy between the parties. By their affidavit in reply, the respondents are opposed to the grant of the order sought, contending that the ground upon which leave I sought have not been disclosed and that the application is an abuse of process.
- [2] The background to the application is that in litigation between the parties before the court below, judgment was delivered in the respondents' favour. The applicant then filed Civil Appeal No. 19 of 2019 before the High Court. When the appeal came up for hearing on 24th October, 2018, at 9.35 am, neither the applicant nor his advocate was in court. That being the third time that the applicant was not appearing in court to prosecute his appeal, it was dismissed with costs. The applicant then on 23rd October, 2019 filed Miscellaneous Civil Application No. 158 of 2019 seeking to have the appeal reinstated. When that application came up for hearing on 25th February, 2020 neither the applicant nor his advocate was in court. The application was then dismissed, prompting the applicant to file Miscellaneous Civil Application No. 042 of 2020 for its reinstatement.

Arguments of counsel for the Applicant.

- [3] In their submissions, counsel for the applicant argued that the applicant was unrepresented at the time he filed the pleadings sought to be amended and as a result omitted some material facts. The intended amendment will bring the real questions in controversy into focus. The real character of the litigation will not change as a result of the proposed amendment. The intended amendment will not cause the respondents any injustice.

Arguments of counsel for the respondents.

- [4] In response, counsel for the respondents, submitted that the applicant does not disclose the grounds for the application nor the extent of the amendments sought. The only point in controversy is whether or not the applicant was admitted in St. Mary's Lacor Hospital on the 25th February, 2020 which the applicant amply addressed in the application sought to be amended. There is therefore no need to amend the application. The application sought to be amended has already been fixed for ruling. The application should therefore be dismissed.

- [5] Order 6 rules 9, 18 and 31 of *The Civil Procedure Rules* give the Court a wide discretion to allow either party, at any stage of proceedings, to alter or amend his or her pleadings in such a manner and on such terms as may be necessary for the purpose of determining the real question in controversy as between the parties. The paramount guiding principle in the exercise of this discretion is that the intended amendment should enable court to determine the real questions in controversy between the parties, without causing injustice to the other party. Prejudice which can be compensated by the award of costs is not an injustice (see *Gasco Transport Services (Bus) Ltd v. Obene [1990-94] EA 88*). Multiplicity of proceedings should be avoided as far as possible and all amendments which

avoid such multiplicity should be allowed. The proposed amendment should enable justice to be done between the parties.

[6] In the instant application, the relevance of the facts sought to be introduced cannot be determined since they are not disclosed in the application. The court is consequently not guided as to whether when introduced by amendment such facts will advance the cause of determining the real question in controversy between the parties. In any event, Miscellaneous Civil Application No. 158 of 2019 was dismissed on 25th February, 2020 and the application to have it re-instated has been adjudged to be entirely without merit. No amendment may be made to an application that stands dismissed for its failure to advance the cause of determining the real question in controversy as between the parties. As the order sought in the instant application is devoid of the necessary legal and factual foundation, it must fail.

Order:

[7] In the final result, this application therefore is accordingly dismissed with costs to the respondents.

Delivered electronically this 23rd day of July, 2020

.....*Stephen Mubiru*.....
Stephen Mubiru
Resident Judge, Gulu

Appearances

For the applicant : M/s Awino, Openy, Nyafono Advocates and Legal Consultants.

For the respondents: M/s Owor-Abuga and Co. Advocates