

**THE REPUBLIC OF UGANDA  
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA  
MISC. APPL. NO. 286 OF 2019  
[ARISING FROM LDR NO. 015/2018)**

**BETWEEN**  
**HENRY MUHWEZI TINDYEBWA.....APPLICANT**

**VERSUS**

**STEADFIN UGANDA CO-OPERATIVE  
SAVINGS AND CREDIT SOCIETY LIMITED.....RESPONDENT**

**BEFORE**

1. Hon. Chief Judge Ruhinda Asaph Ntengye
2. Hon. Lady Justice Linda Tumusiime Mugisha

**PANELISTS**

1. Ms. Adrine Namara
2. Mr. Michael Matovu
3. Ms. Susan Nabirye

**RULING**

This is an application by notice of motion brought under **Section 98 of the Civil Procedure Act, Sections 33 & 39 of the judicature Act and Order 24 Rules 9 and 12 and Order 52 Rule 1 of the Civil Procedures Rules.**

It is supported by an affidavit sworn by the applicant while an affidavit in reply was sworn by one Benjamin Mukasa, executive Officer of the respondents.

**REPRESENTATION**

The applicant was represented by Mr. Patrick Mugalula of M/s. Katende, Ssempebwa & Co. while the respondent was represented by M/s. Kiiza Lillian of M/s Kiiza & Kwanza Advocates.

The application seeks an order of this court that FSN Uganda Cooperative Society be substituted with the respondent in LDR No. 15/2018 and that the applicant be granted leave to amend the claim in the Head suit.

The affidavit in support of the application is to the effect that while the claimant sued FSN Uganda Cooperative Society Limited and while they were before the Labour officer, the said cooperative Society merged with another SACCO and amalgamated into the respondent making the respondent a successor in title.

The affidavit in reply is to the effect that the applicant having been an employee of FSN (U) SACCO, the respondent was not party to whatever transpired between the two parties prior to the merger by which time it was non-existent. The affidavit in reply is also to the effect that no transfer of liabilities was caused by the merger.

## **SUBMISSIONS**

In their submission both counsel framed the following issues:

- 1) Whether Steadfin Uganda SACCO LTD can be substituted as defendant in Labour Dispute Reference No. 15/2018 by way of amendment.
- 2) What remedies are available to the parties.

Counsel for the applicant on the first issue strongly submitted that as per evidence in paragraphs 10, 11, 12 and 13 of the affidavit in support of the application, FSN having entered a voluntary amalgamation with US Embassy (U) FSN Co-operative to form Steadfin, the latter legally assumed the assets and liabilities of both FSN and the other SACCO. He relied on **Order 24 rules 9 of C.P.R** and **Section 25 of the Cooperative Societies Act**. He relied also on the authorities of an Indian case of **Bhangwan Dass Chopra Vs United Bank of India & Others 1988 AIR 215, 1988 SCR (1) 1088** and **Francis Rutagarama Bantariza Vs Habre Intern Trading Co. Ltd. (Civil Appeal No. 14/1999)**.

In reply to the above submissions, counsel for the respondent argued that FSN (U) Cooperative Society was wound up and the applicant did not bother to be on the list of creditors. Relying on the authority of **The Trustees of Rubaga Miracle Centre Vs Mulangira Ssimba, Misc. Appl. 655/2005** he strongly argued that where an amendment by way of substitution of a party that has no legal existence, the plaint must be rejected as it is no plaint at all.

He also relied on the authority of **Benjamin Sajjabi t/a Namataba Vs Timber Manufacturers Ltd (1978) HCB 262** for the proposition that much as an amendment of pleading is allowed where a party is substituted, such amendment can only be made if they are minor matters of the identity of the parties to the suit.

#### **DESCISION OF COURT:**

Order 24 rule 9 of the Civil Procedure Rules provides;

##### **“9. Procedure in cases of assignment before final order in suit.**

- (1) In other cases of an assignment, creation or devolution of any interest during the pendency of a suit, the suit may, by leave of the court, be continued by or against the person, to or upon whom the interest has come or devolved.**
- (2) The attachment of a decree pending an appeal therefrom shall be deemed to be an interest entitling the person who procured the attachment to the benefit of sub-rule (1) of this rule”.**

Section 25 of the cooperative Societies Act provides:

##### **“25. Voluntary amalgamation of societies**

- 1) Any two or more registered societies may, with the prior approval of the registrar, amalgamate into a single society.**
- 2) An amalgamation referred to in sub-section (1) shall not take place unless**
  - (a)....**
  - (b)...**

- (c) **A preliminary resolution has been passed by a two-thirds majority of the members present at the meeting of the amalgamation.**
- 3) An amalgamation of registered Societies into one society under this section may be effected without dissolution of the societies concerned or a division of the assets and liabilities of the amalgamated societies and a resolution for the societies passed for the amalgamation shall be sufficient for the transfer of the assets and liabilities of the amalgamation societies to the new society.**

It was conceded by the respondent in **paragraph 2(b) of the affidavit in reply** that there was an amalgamation of FSN Co-operative Society with other SACCOs to form the respondent Society which was eventually registered and issued a certificate of registration.

In paragraph 10 of the affidavit in support of the application the applicant swears that FSN co-operative Society caused the amalgamation without his or his lawyers' knowledge while the matter was being handled by the Labour Officer.

In the absence of any evidence reflected in the affidavit in reply as to what circumstances led to the formation of the respondent, it is not believable that FSN was wound up through a legal process and that the applicant should have applied to be on the list of creditors as argued by the respondent. The uncontested fact is that without the knowledge of the applicant and while the matter was being litigated, FSN amalgamated with another society to form the respondent.

The complaint was filed against FSN as it existed at the time of filing before the Labour officer. We would like to agree with counsel for the respondent that this application is distinguishable from the **Trustees of Rubaga Miracle Centre Vs Mulangira SSimba (Supra)** which sought a rejection of the plant in the suit on the ground that the defendant had no capacity to sue because it was a non-existing person. Whereas the suit in the **Rubaga Miracle Centre case** was brought against a non-legally existent person, the complaint in the instant matter was against an existing FSN which amalgamated to form the respondent.

We are of the strong opinion that substitution of a party under **Order 1 rule 10** of the **CPR** or dealing with parties to the suit in any other manner as prescribed under

**Order 1 of the CPR** which was the case in the above Rubaga Miracle Centre case is completely distinct from the intended substitution of the parties as provided under **Order 24 rule 9 CPR**. Consequently, the principle that

**“Where the amendment by way of substitution of a party purports to replace a party that has no legal existence, the plaint must be rejected”** does not apply in the instant case.

As was held in the case of **Francis Rutagarama Bantariza Vs Habre Intern Trading Co. Ltd, Supreme court application 14/1999** while considering the then Order 2 rule 9 (current order 24 rule 9 CPR):

**“Our understanding of this rule is that the provisions of this rule are permissive in that, prima facie, the suit may be continued in the name of the original party or assignee or a person upon whom interest has devolved.....The applicability of the rule appears to be based on the principle that the trial of a suit cannot be arrested merely by reason of a devolution of the interest of a party in the subject matter of the suit, that the person acquiring the interest may continue the suit with the leave of court but that if he does not choose to do so the suit may be continued with the party and the person acquiring the interest will be bound by or can have the benefit of the decree as the case may be.”**

The leave of court being sought by the applicant is for the respondent to take its position as an organization to which the interest in FNS devolved.

In our internalization of **Section 25 (3) of the Co-operative Societies Act**, we take it to mean that although an amalgamation of registered societies into one society may be effected without dissolution of the societies concerned or division of assets and liabilities, a resolution of the society passed for amalgamation is prima facie evidence that the assets and liabilities of the amalgamated societies have been transferred to the new society.

In the instant case the respondent having conceded to the amalgamation, it is our finding that a resolution to that effect was passed. Given both the provisions of **Order 24 rule 9 of CPR** as interpreted by the above case and **Section 25 of the Cooperative Societies Act**, we find merit in the

submission of the applicant that the respondent having been formed after an amalgamation of the original FNS Society and another, the rights and liabilities of the said FNS Society were transferred to the respondent. This is especially so in the absence of the Resolution providing for the contrary. Accordingly, the first issue is in the affirmative. The application is allowed and the applicant will file the necessary amendment within 14 days of the delivery of this ruling. No order as to costs is made.

**Delivered & Signed by:**

- 1. Hon. Chief Judge Ruhinda Asaph Ntengye .....
- 2. Hon. Lady Justice Linda Tumusiime Mugisha .....

**PANELISTS**

- 1. Ms. Adrine Namara .....
- 2. Mr. Michael Matovu .....
- 3. Ms. Susan Nabirye .....

Dated: 28/08/2020