

This application was brought under section 33 of the Judicature Act, Section 98 of the Civil Procedure Act, rules 7(1) &(2) of the Judicature (Judicial Review) Rules, 2009 and Order 1 r 10(2) & 13 and Order 52 rules 1,2 & 3 of the Civil Procedure Rules.

The applicants contended in the grounds and also in the affidavit in support the 2nd applicant was wrongly joined as a party therefore should be struck off and substituted by Parliament of Uganda as a party. Secondly, that at the time of filing the main application, there were material facts not available to the applicants and were thus not pleaded in the application. Thirdly, that it is desirable and important that all matters in controversy be pleaded in order for court to reach a just and fair finding.

The respondents filed affidavits in reply and opposed the application to amend the notice of motion and contended that the intention to substitute the 2nd respondent with Parliament of Uganda would be a waste of time since Attorney general was already added to the application as the 1st respondent.

The Applicants challenged the nomination and subsequent appointment of the 4th respondent as the Deputy Chief Justice of Uganda and filed the main application in 19th November 2020.

The applicants were represented by *Moses Ingura* whereas the 1st and 3rd respondents were represented by *Geoffrey Madette* and *Akello Suzan Apita*, 2nd respondent was represented by *Akena Moses* and *Opolot Esther*, 3rd respondent was represented by *Byenkya Ebert*.

The parties filed written submissions in the interest of time and the same have been considered in this ruling.

The applicants in the affidavit in support seems to be more interested and worried about substituting a Parliamentary Commission with Parliament

of Uganda as party and this is premised on paragraph 3. The other paragraphs are alluding to failure to be availed information by judicial Service Commission.

On the other hand, the respondents in their respective affidavits in reply opposed the application to substitute a party and that the information availed by the Judicial Service Commission does not in any way introduce any new matters that would warrant amendment. The application is wastage of time and intended to delay the matter pending before this court.

Analysis

This court has powers under **Section 98 of the Civil Procedure Act Cap 71** to make such orders as may be necessary for the ends of justice as well as under **Order 1 Rule 10 of the Civil Procedure Rules** to set substitute a party wrongly added to the pleadings. The court is also empowered to allow the applicant to amend his or her motion or to file additional or further affidavits to be used if they deal with new matters arising out of any affidavit.

The courts exist for the purpose of doing justice between the parties and not punishing them, and they are empowered to grant amendments of pleadings in the larger interest of doing full and complete justice to the parties. Provisions for the amendment of pleadings are intended for promoting ends of justice and not for defeating them.

The rules confer wide discretion on a court to allow either party to alter or amend his/her pleadings at any stage of the proceedings on such terms as it deems fit. Such, discretion, however must be exercised judicially and in consonance with well-established principles of law and this puts restrictions on the power of the court in allowing amendment.

Therefore, the main points for consideration before a party is allowed to amend pleadings are; whether the amendment is necessary for the determination of the real question in controversy and whether the amendment can be allowed without injustice to the other side.

In the present case, the amendment being sought is for a notice of motion and production of additional and further evidence by way of affidavit. This ought to be considered with great circumspection since it is not the ordinary amendment of pleadings like plaint and defence. An amendment to a notice of motion and affidavit in support has a serious bearing on the nature of the case presented and the issue of timelines for handling such a matter must be seriously considered in the circumstances of the case.

The applicants in this matter have contended in their affidavit that they seek to have Parliamentary Commission substituted with 'Parliament of Uganda' as a party. This courts view is that such an amendment is not necessary for the purpose of determining the real question in controversy between the parties. The applicants having filed an application against a party against whom they have no cause of action and out of fear of being condemned to pay costs want to use this application to substitute a party which has not corporate personality; that cannot sue or be sued in its name- 'The Parliament of Uganda' the Constitutional Court held that The Parliamentary Commission cannot defend Parliament beyond its (Parliamentary Commission) statutory functions and that the Attorney General in line with Articles 119 and 250 of the Constitution has the responsibility of defending Parliament as an organ of Government . See *Parliamentary Commission v Twinobusingye Severino and AG Constitutional Application No. 53 of 2011*

Secondly, the Parliament of Uganda is wholly represented in this matter by the 1st respondent mandated under Article 250 of the Constitution with the

duty to represent the Government in all civil proceedings. There is no justification in introducing a non-recognized party to the proceedings which are pending in this court. Such an amendment is not necessary to decide the real dispute between the parties, but rather an ingenious way of avoiding the 2nd respondent's intended preliminary objection, already highlighted in their affidavit in reply. This application is therefore not made in good faith. See *Gaso Transport Services (Bus) Ltd v Martin Adala Obene [1990-1994] EA 88*

The applicants contend that they want to file further affidavits in support of their case and they premise this contention on the fact that they applied for information from Judicial Service Commission and Clerk to Parliament which failed to avail that information. The applicants sought information from the said public bodies on 10th November 2020. On the 19th day of November 2020 the applicants filed an application in this court. This implies that the applicants were no longer interested in the information and it was not necessary anymore to their case.

The applicants' case as it stands in this court was never dependent on what the respondents would have pleaded or given in evidence to oppose the application. Whether or not the proposed amendment changes the character of the suit would depend on the circumstances of the case considering the nature of the amendment sought.

The applicants as noted earlier seem to hinge their desire to file additional affidavits in support of their application on the information which has been availed by Judicial Service Commission in reply to their letter requesting for information about the appointment of the 4th respondent. A close scrutiny of that response is that the Judicial Service Commission refused the request for the information requested by the applicants. To my mind, this cannot be basis of seeking to file further affidavits.

It is not clear to this court whether the applicants intended to introduce new grounds arising out of the refusal to be availed information sought or they have additional information they never pleaded that they want to introduce in the additional affidavits. Leave to amend will be refused where the effect of the proposed amendment is to take away from the other side a legal right accrued in his favour. As a general rule, every litigation must be determined on the basis of facts that existed on the date of filing the suit. A court may, only in exceptional circumstances take into account subsequent events in order to shorten litigation or to preserve, protect and safeguard rights of both parties and subserve the ends of justice.

The application before this court challenging the appointment of the 4th respondent was filed on 19th November 2020 and in the simple computation of time this was the last day to the expiry of 3 months limitation period. Therefore any amendment being introduced has a direct bearing on the limitation period set for filing an application for judicial review. The nature of procedure for challenging such decision by way of judicial review has an element of limitation of action. An amendment of pleading should not be allowed if the effect of such amendment is to deprive a party of a right which he has acquired by virtue of the limitation period.

The applicants seem to be interested in merely rebutting what the respondents have asserted in their affidavits in reply and indeed as submitted in court, they found it necessary to rejoin to what the respondents have stated in reply. There is no rejoining in evidence given under judicial review and once a party presents their case, they may only seek leave to file a supplementary affidavit to support their case. The court should not allow inconsistent and contradictory allegations in negation to the admitted position of facts or mutually destructive allegations of facts to

be incorporated by means of amendment. An amendment merely intended to regurgitate the same question and lead further evidence should be disallowed in proceedings by way of Notice of motion.

The respondents have contended that the application for amendment and filing of further affidavits is intended to delay trial and determination of the matter. This application was filed on 19th November 2020, and the applicants realized that they have to amend their application or file further affidavit on the day the matter was fixed for hearing on 10th February 2021.

The nature of judicial review application is a specialized procedure which has timelines with which it ought to be determined. According to rule 5 of the **Judicature (Judicial Review) (Amendment) Rules, 2019**;

“7B Time of Disposal.

An Application for judicial review shall be disposed of within ninety days from the date of filing the application.”

It can be deduced from the above rule that time is of the essence in applications of this nature and the court must be mindful in exercise of discretion to allow an amendment which will delay trial and finally the determination of the main application.

This application fails and is dismissed with costs to the respondents.

The 2nd respondent is struck off as a party to the main cause with costs.

It is so ordered.

SSEKAANA MUSA
JUDGE
1/04/2021

COURT DIRECTIONS ON FILING SUBMISSIONS

The parties are directed to complete the filing of their submissions in the following order;

- ✓ Applicants to file by 16th April 2021
- ✓ Respondents to file by 30th April 2021
- ✓ Applicant to file a rejoinder if any by 7th May 2021
- ✓ The matter shall come up for mention by 14th May 2021 at 9am