

1. That the applicant be granted leave to amend the plaint in civil suit No.102 of 2022.
2. That the applicant be granted leave to add the 2nd and 3rd respondent as defendants.
3. The costs of the application be provided.

The grounds upon which the application is premised are set out in the affidavit of the applicant which are;

- a) That the applicant through the 1st respondent's written statement of defence discovered that the second and or third respondent had authored a false statement reference in respect to the applicant which the 1st respondent purports to have been the reason for its revocation of the employment offer to the applicant.
- b) The said employee reference from the second and or third respondent had not been availed to the applicant before the filing of the suit in spite of his requests for the same.
- c) That the said employee reference from the second or third respondent to the first respondent is false and unjustified did not exist at time the first respondent revoked its employment offer to the applicant and if at all the said reference letter existed at the time the first respondent revoked its employment offer to the applicant and it was used by the second respondent to induce the breach of contract by the first respondent.
- d) The applicant intends to add the second and third respondent as defendants and to amend the plaint to include new material facts and reliefs arising from the said employee reference to the first respondent and further enable court determine the real questions in controversy between the parties in finality so as to avoid multiplicity of suits arising from the same transaction or series thereof and common questions of fact as between the respondents.
- e) The intended amendments in the plaint do not alter the cause of action against the first respondent and neither do they in anyway adversely and

substantially depart from the plaintiff's original claim against the first respondent and no prejudices shall be suffered by the respondents owing to the amendment of the plaint.

- f) That the application was made without delay and that it is in the interest of justice that the orders sought herein are granted.

The respondent opposed the application on ground that it does not sufficiently demonstrate the grounds for amendment of pleadings and no leave to amend should be granted in the circumstances.

The applicant was represented by *Ms Cleofus Mallis Atango* while the respondents were represented by *Micheal Mafabi*

The following issues were framed for determination;

- 1. Whether the applicant should be granted leave to amend the original plaint in Civil Suit No.0102 of 2022?*
- 2. Whether the applicant should be granted leave to add the second and third respondents as defendants in Civil Suit No. 0102 of 2022?*

Determination

Whether the applicant should be granted leave to amend the original plaint in Civil Suit No.0102 of 2022?

Analysis

The wide and extensive powers of amendment vested in the courts are designed to prevent failure of justice due to procedural errors, mistakes and defects and they are exercised to further and serve the aims of justice. The powers of amendment are intended to make more effective the function of the courts to determine the

true substantive merits of the case, to have more regard to substance than to form, and thus free the parties and the court from technicalities or formalities of procedure and to correct defects in the pleadings. However, such extensive powers would, by no means, translate to a *carte blanche* for effecting amendments which seek to overreach the adversary by attempting to alter the nature of the defence; or for unfairly prejudicing the plaintiff, or which, if granted, would entail further evidence to be led on both sides, although one of them had already closed his case.

Order 6 Rule 19 of the Civil Procedure Rules stipulates that the court may at any stage of the proceedings allow either party to alter or amend his or her pleadings in such a manner and on such terms as may be just and all such amendments shall be made as maybe necessary for the purpose of determining the real questions in controversy between the parties.

The principles governing the amendment of pleadings were laid down in the well decided case of ***Gasco Transport Services Ltd versus Martin Adala Obene is SCCA 4 of 1994*** where it was observed the following conditions must be adhered to before amendments of pleadings are allowed;

- a) The amendment should not work an injustice on the other side. An injury that can be compensated for by way of costs is not treated as an injustice.
- b) Multiplicity of proceedings should be avoided as far as possible and all amendments which avoid such multiplicity should be allowed.
- c) Application which is made *malafide* should not be granted.
- d) No amendment should be allowed where it is expressly or impliedly prohibited by any law.

In ***Lubowa Gyaviira and other v Makerere University HCMA No. 471 of 2009*** it was stated that an amendment should be allowed if it does not prejudice to the opposite party and that there would be no prejudice if the other party can be compensated by costs.

In the case of ***Eastern Bakery v Castelino [1958] EA 461*** it was observed that amendments to pleadings sought before the hearing should be freely allowed if they can be made without injustice to the other side and there is no injustice if the other side can be compensated by costs.

The court will not refuse to allow an amendment simply because it introduces a new case but there is no power to enable a distinct cause of action to be substituted for another the court will refuse leave to amend where the amendment would change the action into one of her substantially different character or where the amendment would prejudice the rights of the opposite party existing at the date of the proposed amendment.

Amendments are allowed by courts so that the real question and controversy between the parties is determined and justice is administered hence if a plaintiff applies for leave to amend its pleadings court should in the interest of promoting justice freely allow him to do so unless the unless this would cause an injustice for the opposite party which cannot be compensated by an award of costs or unless the amendment would introduce a distinct cause of action in place of the original cause.

On perusing the original plaint and the proposed amendment I do not find that the new amendment introduces a new cause of action on completely new facts with different evidence that amendment is however premised on an addition of more

noteworthy facts and of another party in order to determine the real controversy among other relevant parties.

The respondent submitted that the proposed amendment is prejudicial to the respondents as it proposes to combine unrelated causes of action in the same suit with the result that the respondent will be inconvenienced and embarrassed in presenting their respective defenses. On the contrary I find that the causes of action are related as they arise from the same series of transactions and they ought to be resolved in the same suit to avoid multiplicity of suits. The court is more interested in doing substantial justice. Courts are to approach the question or issue of amendment liberally particularly where the amendment will meet the ends of justice.

An application for amendment should not be granted as a matter of course. The court has the discretion to grant permission for amendment, such discretion must be exercised judicially and judiciously taking into account competing rights of the parties to justice. Where the intention of amendment like in the present case is to clarify the issues in controversy between the parties or remove any possible injustice in the case and is not to overreach the adverse party, an amendment should be granted. The test as to whether a proposed amendment should be allowed is therefore whether or the party applying to amend can do so without placing the opposite party in such a position which cannot be redressed by that panacea which heals every sore in litigation namely costs.

Owing to the fact that the application for amendment is premised on facts that the applicant had no knowledge of at the time of the institution of the suit and only became aware of the same after the first respondent filed their written statement

of defence, I find it pertinent that the amendment be allowed to include all these material facts in order to have the matter resolved as a whole.

Whether the applicant should be granted leave to add the 2nd and 3rd respondents as defendants in Civil Suit No. 0102 of 2022?

Analysis

Anyone whose presence is crucial and fundamental to the resolution of a matter before the court must be made a party to the proceedings. The only reason which makes it necessary to make a person a party to an action is so that he should be bound by the result of the action, and the question to be settled therefore must be a question in action which cannot effectively and completely settled unless he is party.

Order 1 rule 3 of the civil procedure rules stipulates that all persons may be joined as defendants against 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 in the alternative where if separate suits were brought against those parties any common question of law or fact would arise.

In ***Samson Ssempasa v P.K Sengendo HCMA No.577 of 2013*** it was noted that the purpose of joinder of parties is to enable court effectually and completely deal with the matter in controversy and avoid multiplicity of proceedings. Joinder of parties to an action is an act of uniting to that action all persons who have the same rights or against whom rights are claimed as either co-plaintiffs or co-defendants. The reason for joining a party to an action is that he should be bound by the result of the action. The question to be determined in an action must be such that cannot be effectively and completely settled unless the person sought to be joined is made

a party to the action. The test is whether the person to be joined will have his interest irreparably prejudiced if an order joining him is not made.

In relation to the facts given the fact the above order requires that all persons be joined as defendants against whom any right to relief in respect of or arising out of some act or transaction or series of actual transactions is alleged to exist whether jointly severally or in the alternative where if separate suits were brought against these persons any common question of law facts would arise. In determining whether to join a party to a suit or not, the court ought to peruse the pleadings and affidavit of the parties to a suit.

The revocation of the employment offer of the 1st respondent was induced by a reference letter issued by the second respondent it can be submitted that the cause of action is arising out of the same series of transactions hence it will enable the court to determine the matter in relation to all the relevant parties involved if the second respondent is joined as a party.

An action cannot be defeated on the ground of non-joinder, mis-joinder or mis-description of the parties, because the court *suo motu* or on the application of any of the parties, can join a party to an action, if found necessary. Even if a party who ought to have been joined to an action is not so joined, that failure to join him does not necessarily defeat the action, since the court may in very cause or matter deal with the matter in controversy so far as regards the rights and interests of the parties actually before it.

The applicant is allowed to join the parties he deems necessary for the determination of the matters in controversy.

This application succeeds and the applicant is allowed to amend the plaint and also join additional parties within 15 days. The costs shall be in the cause.

I so Order

Ssekaana Musa

Judge

30th November 2023