



THE REPUBLIC OF UGANDA
IN THE CHIEF MAGISTRATES COURT OF PALLISA AT PALLISA
LAND CIVIL SUIT NO. 014 OF 2023]
OKURUT JOSEPH PETER ::::::::::::::::::::::::::::::::::: PLAINTIFF
VS
OUNOI DENIS::: DEFENDANT

*Before: His Worship Kyembe Karim ESQ
Magistrate G.I*

JUDGMENT

Introduction.

Okurut Joseph Peter hereinafter referred as the plaintiff originally instituted this action by way of an ordinary plaint and filed on the 7th June, 2023 seeking declarations of trespass against the defendant, general damages, exemplary damages and costs of the suit.

Vide **miscellaneous application no. 007 of 2024**, by way of a chamber summons, the plaintiff applied for leave to amend his plaint and attached his proposed amended plaint and the said application was granted as uncontested on the 10th September, 2023, under the hand of my predecessor trial Magistrate, the learned sister, **H/W Nantongo Sarah**.

On the 5th November, 2024, the defendant filed a written statement of defence in reply to the aforementioned amended plaint.



When the matter came up for hearing, learned counsel for the defendant raised a preliminary objection to the plaint on grounds that the amendment changed the cause of action and the same should be disallowed.

Defendant's Submissions.

Learned counsel for the defendant cited for court **O. r. 22 CPR** for the proposition that.

"22. Disallowance of amendment.

Where a party has amended his or her pleading under rule 20 or 21 of this Order, the opposite party may within fifteen days from the date of service upon or delivery to him or her of the duplicate of the amended document apply to the court to disallow the amendment or any part of it; and the court may, if satisfied that the justice of the case requires it, disallow the amendment or any part of it or allow it subject to such terms as to costs or otherwise as may be just."

Learned counsel further cited for court **O. 6 r. 28 CPR** for the further argument that:

"28. Points of law may be raised by pleading.

Any party shall be entitled to raise by his or her pleading any point of law, and any point so raised shall be disposed of by the court at or after the hearing; except that by consent of the parties, or by order of the court on the application of either party, a point of law may be set down for hearing and disposed of at any time before the hearing."



Learned counsel further cited **Eastern Bakery –VS- Castelino [1958] 1 EA 461** to support his argument that Court will refuse leave to amend where the amendment would change the action into one of a substantially different character or where the amendment would prejudice the rights of the opposite party existing at the date of the proposed amendment, e.g. by depriving the party of the defence of limitation accrued since the issue of the writ.

In learned counsel's view, the plaintiff who initially pleaded for specific performance in the original plaint should not be allowed to plead trespass in the amended plaint. He submitted in conclusion stating that the amendment changed the cause of action and for that reason, court should reject the amended plaint.

Plaintiff's submission in reply:

Learned counsel for the plaintiff submitted in reply thereto. First, he laid out the background of the case and most importantly, he submitted that the objection is already overtaken by events, it is misconceived, a none starter and waste of court's time, amongst other colorful words.

Learned counsel pointed out to court that the application for amendment was instituted in accordance with the provisions under **O. 6 Rules 19 and 31 of the CPR**, which in his view does not restrict introduction or none introduction of a cause of action and further, that in matters where a new cause of action is introduced and is capable of changing the character of the proceedings, the opposite party should not be prejudiced and in this case, this was evidenced in the defendant filing a written statement of



defence in response thereto and no evidence or pleading shows that the defendant was prejudiced in any way.

Representation:

The plaintiffs were represented by M/S MENYA & CO. ADVOCATES while the defendants were represented by M/S OPOLOT OTAGET & CO. ADVOCATES.

Consideration by court:

Under **Sections 101,102 & 103 of the Evidence Act cap 8**, the burden of proof lies on the party that seeks court to believe its side of the story. In the case of **Wangala Philip Vs Steel and Tube industries Ltd HCCS no. 212 of 2018, Hon. Justice Boniface Wamala** re-confirmed that the burden of proof in civil cases lies on the plaintiff/claimant and that the standard is that on a balance of probabilities.

This proposition is also inversely true where a party raises a preliminary objection. It is that parties burden to satisfy court of the merits in the alleged grounds of objection.

In ***Mukisa Biscuit Manufacturing Co. Ltd v. West End Distributors Ltd [1969] EA 696*** Court stated that a preliminary objection consists of a point of law which has been pleaded, or which arises by clear implication out of the pleadings, and which if argued as a preliminary point may dispose of the suit.



It raises a pure point of law which is usually on the assumption that all the facts pleaded by the other side are correct. It is thus based on a commonly accepted set of facts as pleaded by both parties. **It cannot be raised if any fact has to be ascertained** or if what is sought is the exercise of judicial discretion. *(Bolding and underlining added for emphasis.)*

In **M/S Semuyaba, Iga & Co. Advocates & anor –VS- Attorney General of The Republic of South Sudan & 2 Others Miscellaneous Application no. 0004 of 2022**, **HON. JUSTICE STEPHEN MUBIRU** held that Preliminary objections relate to points of law, raised at the outset of a case by the defence without going into the merits of the case. In any preliminary objection therefore, there is no room for ascertainment of facts through affidavit or oral evidence. *(underlining added for emphasis)*

I note that learned counsel for the defendant submitted alluding to the fact that that the amendment deprived the defendant of a potential defence of limitation. I have perused the written statement of defence and I haven't seen any pleading or facts in that respect. It seems to me that issue is only being raised at the bar.

As regards whether or not this preliminary objection was properly raised before this court, I agree with learned counsel for the plaintiff that the same is overtaken by events. It was by order of this court dated 10th September, 2023, under the hand of **H/W Nantongo Sarah** that the amendment was allowed without contest. It appears to me that the said order has never been appealed, reviewed or set aside.



That being the case, would it be proper to reject the amendment at this point whereas the same was effected with leave of court and without contest from the opposite party? Why does this court feel like this is a disguised appeal against order of this court dated 10th September, 2023, under the hand of **H/W Nantongo Sarah**?

Having said that, it is my humble view that, to entertain this preliminary objection would tantamount to this court sitting in an appeal against its own decision aforesaid, which, needless to say, is improper.

There are more unkind words used by counsel for the plaintiff to describe the preliminary objection, but I refrain from exploring their meanings at the moment.

The net effect is that I disagree with the learned counsel for the defendant and the preliminary objection is hereby overruled.

Section 27 of the Civil Procedure Act, provides that costs are within the discretion of the court. I hereby grant costs to the plaintiff and the same shall remain in the cause.

The suit shall be set down for scheduling.

I so order.

Dated at PALLISA this.....16th....day of ...APRIL...2026



A handwritten signature in black ink, appearing to be "H/W KEMBE KARIM".

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H/W KEMBE KARIM

MAGISTRATE G.1