



**IN THE EAST AFRICAN COURT OF JUSTICE
AT ARUSHA FIRST INSTANCE DIVISION**

(Coram: Monica K. Mugenyi, PJ; Isaac Lenaola, DPJ & Audace Ngiye, J)



APPLICATION NO.3 of 2016

(Arising From Reference No. 1 of 2015)

JOHNSON AKOL OMUNYOKOLAPPLICANT

VERSUS

**THE ATTORNEY GENERAL OF THE REPUBLIC OF
UGANDA..... RESPONDENT**

1st DECEMBER, 2016

RULING OF THE COURT

Introduction

1. The present Application arises from **Reference No.1 of 2015** where the Applicant has invoked Articles 6(d), 7(2), 27 and 30 of the Treaty for the Establishment of the East African Community (hereinafter referred to as "**the Treaty**"), as well as Rules 24(1),(2),(3) of the East African Court of Justice Rules of Procedure, 2013 (hereinafter referred to as "**the Rules**") in seeking orders challenging the Government of Uganda's refusal to return him to his permanent and pensionable employment as a Foreign Service Officer.
2. Before the Reference could be heard, the Applicant filed a Notice of Motion under Rules 1(2), 48(c), 50(1),(2),(3) of this Court's Rules seeking orders that:
 - a) ***Leave be granted to the Applicant to amend his pleadings.***
 - b) ***Costs of the Application be provided for.***
3. The grounds of the Application are that the amendments are necessary to resolve issues in controversy between the Parties to the Reference. The Applicant in that regard contends that the intended additions were omitted by mere oversight and human error, and no injustice or prejudice shall be occasioned to the Respondent if the Application to amend is granted. He further argues that it is in the interest of justice that the Application be allowed.
4. In the supporting Affidavit sworn on 7th July 2016, the Applicant has outlined the justification for amendment and states that he will be prejudiced if this amendment is not allowed since he will have missed out on some remedies that he is entitled to.

5. Ms. Josephine Kiyingi of the Ministry of Justice and Constitutional Affairs/Chambers swore an Affidavit in reply on 16th August 2016. She urged the Court to dismiss the Notice of motion dated 7th July 2016 arguing that the proposed amendments are an abuse of Court process since it is not true that there was a genuine mistake at the time of filing **Reference No.1 of 2015** as alleged. In her opinion, the intended amendments are argumentative and offend the Court's Rules. Further, the amendments sought are not concise statements of facts as required by the Rules, but rather, amount to evidence adduced by the Applicant. Therefore, the Respondent will in effect be replying to submissions and not concise statements of facts. Lastly, the said deponent contends that there was inordinate delay in filing the Application, and therefore the Respondent will suffer prejudice in the event that it is allowed.
6. At the hearing of this Application the Applicant was represented by Mr. Fitz Patrick Furah, learned Counsel while Ms. Goretti Arianaitwe, learned State Attorney, represented the Respondent.

Applicant's Submissions

7. Mr. Furah, in his submissions, maintained that the amendments sought seek to raise all the issues in controversy in this matter that, at the filing of the Reference, were not included by omission and oversight. He also argued that the Application was brought under the correct law, in good faith and for the ends of justice. He therefore prayed that this Court ought to allow it.
8. In response to questions from the bench, Mr. Furah conceded that it was not proper for the Applicant to amend his Affidavit in support of the Reference and to cite authorities in the body of the Amended Reference. He also conceded that his application was not concise.

9. Finally, Mr. Furah argued that the Court has discretion to allow the amendments as they are or to allow them with adaptations, striking out what may be offensive to the Rules, and committed to complying with whatever other orders the Court would make.

Respondent's Submissions

10. Ms. Arinaitwe, learned Counsel for the Respondent, strongly opposed the Application. Citing the Affidavit of Ms. Josephine Kiyingi, she maintained that the intended amendments were argumentative and offend the Rules of this Court. She further stated that the purported amendments in their entirety were tantamount to submissions.

11. Counsel went on to refer to Rule 37(1) and (2) of the Rules, arguing that in this case, the pleadings were not concise, which is prejudicial to the Respondent and a blatant abuse of court process.

Court's determination

12. From the foregoing arguments, it would appear that the sole issue for determination herein is whether the amendments should be granted or not.

13. The amendment of pleadings with leave of Court is governed by Rules 48(c) and 50 of the Rules. We reproduce the said Rules for ease of reference:

Rule 48

“For the purpose of determining the real question in controversy between the parties, or of correcting any defect or error in any pleading, a party may amend its pleading –

a) ...

b) ...

c) *With leave of the Court.*”

Rule 50

“(1) *The Court may, at any stage of the proceedings, allow any party to amend its pleadings in such manner as it may direct and on such terms as to costs or otherwise as may be just.*

(2) ...”

14. The above provisions expressly provide that this Court has discretionary power to allow amendment of pleadings at any stage of the proceedings for purposes of determining the real question or issue in controversy between the parties. That discretionary power is exercised so as to do justice to the case and must be exercised judiciously with due consideration of all the facts and circumstances before the Court.

15. The principles that guide the exercise of this discretion were discussed in **Eastern Bakery v. Castelino (1958) E.A. 461.** In that case, it was held that as a rule, amendments to pleadings should be freely allowed if they can be made without injustice to the other side. The powers of amendment should also not be used to substitute one cause of action for another or change an action into another of a substantially different character. Subject to this, the fact that an amendment may introduce a new case is not a ground for refusing it. See also **Shivji v. Pellegrini(1972) HCD 76** and **Rogers Mogaka Mogusu v. George Onyango Oloo & 2 Others (2014) eKLR.**

16. In the matter before us, the Applicant argues that the amendments sought are a result of oversight and human error in the pleadings and does not introduce any new cause of action. It is his contention that the

amendment is not, therefore, an abuse of the Court process and neither is it made in bad faith as alleged by the Respondent.

17. Whereas we appreciate the Respondent's argument that the oversight the Applicant fronts as the reason for amendment was not adequately explained and, that the intended amendments are argumentative and not concise, we are not satisfied that that is sufficient reason to disallow the Application.
18. At this stage, we are not concerned with the merits of the Reference as those are matters that will be canvassed at the hearing. Rather, it seems to us that the proposed amendments are necessary to help the Court conclusively determine the issues before it.
19. The other issue raised by the Respondent in opposing the amendment is that there has been unreasonable delay in bringing the Application for amendment before this Court.
20. We note however that in the matter of **Trans – Drakensberg bank Ltd vs. Combined Engineering 1967 (3) SA (D)** it was held that a delay by a litigant in bringing a formal application to amend in itself was not ground for refusing the amendment, unless the Respondent could show prejudice.
21. In the instant case, the Respondent has not demonstrated what injustice, if any, it will suffer if the Applicant is granted leave to amend. On the contrary, if such leave is granted, not only will the Respondent be granted leave to amend his Response to the Reference, if he so wishes, but he could also be entitled to costs.
22. In the event, the Court finds that the intended amendment, though poorly drafted, which is an issue of form and not substance, will advance the cause of justice if granted in this matter.

issues in controversy in the Reference, and are not prejudicial to the Respondent. We do, therefore, allow the Application with costs to the Respondent. The Applicant is ordered to file and serve a properly amended Reference within 14 days from the date of this Ruling. The Respondent is at liberty to file a Reply to the Amended Reference within 14 days of service of the Amended Reference if he so wishes.

24. We so Order.

Dated, delivered and signed at Arusha this 1st day of December 2016.



Hon. Lady Justice Monica K. Mugenyi
PRINCIPAL JUDGE



Hon. Justice Isaac Lenaola
DEPUTY PRINCIPAL JUDGE



Hon. Justice Audace Ngiye
JUDGE