

**VANACORE v PORT-LOUIS**

**(2011) SLR 143**

B George for the applicant  
F Elizabeth for the respondent

**Ruling delivered on 31 May 2011 by**

**EGONDA-NTENDE CJ:** The applicant is the plaintiff in the head suit. She seeks now to amend the plaint and add a new defendant, Design Build, as first defendant and the current two defendants maintained as defendant no 2 and n 3. The application is made by notice of motion with a supporting affidavit. Both documents are so brief that I will set the main contents below.

The notice of motion states -

Take Notice that the plaintiff above-named will move this Honourable Court on the 17th January 2011 at 9.00 o'clock in the fore/afternoon so as the Counsel can be heard for the following orders: (a) That the names of the Defendants be amended to read as follow: Design Build, 1st Defendant, Represented by Daniel Port-Louis 2nd Defendant and Kevin Meme, 3rd Defendant. (b) That the attached plaint be amended accordingly.

Dated this 9 day of July 2010.  
(signed) Applicant

The supporting affidavit states;

AFFIDAVIT IN SUPPORT 1, Veronique Vanacore c/o of Room 5, Trinity House, Victoria Praslin, make oath and say as follows: All the averments stipulated in the attached plaint are true to the best of my knowledge, information and belief.

Signed at Trinity House on this 9 July 2010 (Signed)  
(Before a Notary Public (Bernard Georges))

At the hearing of this application, Mr Bernard Georges, counsel for the applicant, submitted that this application is made not under section 115 of the Seychelles Code of Civil Procedure, hereinafter referred to as SCCP, but that he would refer to this section nevertheless as amendments can be made at any time in the course of the life of a case before the courts. He referred to the cases of *Tive Hive v Kamtin* (1953) MR 80; *Banymandhub v Chungwoo* (1964) MR 224 and *Jagatsingh v Voodho & Walter v Voodho* (1981) MLR 357 for authority that court will allow amendments of pleadings as a rule unless serious injustice was caused to the other side which could not be rectified by costs. He prayed that as the trial of the head suit had not started this application should be allowed.

Mr Frank Elizabeth, learned counsel for the respondents, opposed this application, arguing that this application ought to be dismissed for being bad in law. The application seeks to amend the plaint when it ought to have been for substitution of

the defendant. Secondly he submitted that there is no provision in law to amend the name of a defendant except if there is a typographical error which was not the case here.

It appears to me that what the applicant seeks to do in this case is to add a party, that is a firm (partnership). This is possible under section 112 of SCCP which states,

No cause or matter shall be defeated by reason of the misjoinder or non-joinder of parties and the court may in every cause or matter deal with the matter in controversy so far as regards the rights and interests of the parties actually before it. The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to court to be just, order that the names of any persons improperly joined, whether as plaintiffs or defendants, be struck out, and that the names of any parties, whether plaintiffs or defendants who ought to have been joined, or *whose presence before the court may be necessary in order to enable the court to effectually and completely to adjudicate upon and settle all the questions involved in the cause or matter, be added.* (Emphasis is mine.)

If a party shows that the presence of a person or a firm is necessary for the effectual and complete adjudication of the issues in controversy it is my view that such party can make an application to court under the foregoing provision, and in particular the last portion of the section, (following a disjunctive coma with an or), to add such a party to the action either as plaintiff or defendant provided that if it is a plaintiff it is subject to section 113 of the SCCP.

I am not attracted to the submission of Mr Frank Elizabeth given my comments above. In any case it is not for the defendant to assert that this application must be an application for substitution of a defendant when there is no defendant being substituted. All that the plaintiff is seeking is to add another defendant.

Mr Elizabeth suggested that since the intended party to be added was not a corporate body it could not be added. I do not agree. Section 41 of the SCCP specifically envisions the possibility of firms or partnerships being made defendants to an action and provides for the mode of service upon it.

The troubles that assail this application do not lie in the region proposed by Mr Elizabeth. The notice of motion does not set out the grounds upon which it is made. It basically sets out only the orders sought. The supporting affidavit makes no reference to the notice of motion but allegedly to an attached plaint which was actually not attached. The justification for this application was made from the bar and not on the pleadings. This is unacceptable.

If it is not the law, again it must be good practice for an affidavit to be self-contained, rather than incorporated by reference facts or information and belief from another document as the matters to which the deponent is swearing. [See section 122 of the SCCP which refers to 'an affidavit of facts in support thereof', if only by analogy] This will concentrate not only the person drafting the same but the deponent to focus on what the deponent can prove by way of affidavit as either facts, or matters of information and belief.

Any application before this court must show sufficient cause why it should be granted. The purpose of the notice of motion is to provide the court and parties the substance of the application which must include both the orders sought and the grounds upon which those orders are being sought. It is good practice to state the law as well upon which it is made. The supporting affidavit must set out the facts or information and belief that supports the granting of the orders sought and provides an evidential basis to the grounds set out in the notice of motion. The adverse party may choose to consent to the application once it has notice of the true intent of the application and the supporting evidence if any. Or the adverse party may be in a position to resist the application from an informed perspective, thus assisting the court with the relevant legal arguments.

Mr Bernard Georges cited three cases in support of his submissions. I was able to come across only one in the court library as the Mauritian Law Reports are not a complete set. Law Reports for 1953 and 1981, among others, were missing. I read *Banymandhub v Chung Woo* (1964) MR 224. It was in relation to an application for the amendment of pleadings, and not addition of parties. Nevertheless the general principles discussed in that case may find application to this case in so far as the emphasis is on justice being done and the principle that all questions in controversy should be tried at the same time in one trial. In order to do so courts would be more inclined to grant amendments to pleadings rather than refuse them.

On the other hand it is clear from a reading of that decision that the grounds for making the application were properly articulated on the pleadings and the court had no difficulty in construing the same.

The supporting affidavit in this case is devoid of any iota of evidence to support this application. The notice of motion bears no grounds whatsoever upon which the application is based. The court is left to conjecture. This is not acceptable. Much as it may be possible that there are, perhaps, good grounds for the application being made unless such grounds are articulated on the pleadings (notice of motion and supporting affidavit) the court is ordinarily left with no alternative other than to dismiss such application for lack of merit.

I note that in the present instance the application appears on its face to have been drawn by the applicant rather than an attorney of this court. This in itself does not provide saving grace, especially as she was represented at the hearing by an attorney. However, notwithstanding the foregoing, in the interests of justice, that is the fair and expeditious disposition of matters that come before this court at minimal cost, given that this application is made before any hearing of the main suit has started, at the same time as no prejudice would be suffered by the respondents if their partnership firm is added as defendant no 1 which cannot be met by an order for costs, I will, reluctantly, allow this application.

Permission is granted to the applicant to add one party, Design Build, as defendant no 1, with the present defendants being re-designated defendants no 2 and no 3. The applicant shall pay to defendants no 2 and no 3 costs of this application in any event.