

L'HISTOIRE DE LA FARINE v M_S LANDSCOPE (MAURITIUS) LTD 2023 SCJ 168

SUMMARY

Facts

This was an application made to the Bankruptcy Division of the Supreme Court moving the Court to set aside a statutory demand served on the applicant dated 15 September 2021. The applicant filed a proposed amended motion paper to amend the heading of its application. The respondent objected to the proposed amended motion paper on 4 grounds. The applicant submitted that the Court may readily grant an amendment to correct a mistake as to the name of a party where the mistake is a genuine one and not one which would cause reasonable doubt as to the identity of the party in question whilst the respondent submitted that the applicant and the respondent as styled were non-existent entities and such a styling defect was fatal to the application.

Issue(s)

- i. Whether the application brought both by and against non-existent bodies was null and void *ab initio* and the defect could be cured by substituting a real person for both the imaginary applicant and respondent;
- ii. Whether the purport of the proposed amendments would defeat the preliminary objections raised by the respondent in its counter affidavits;
- iii. Whether the proposed amendments would prejudice the respondent's rights as they came at a very later hour, after the exchange of affidavits; and
- iv. Whether the proposed amendments would constitute an abuse of the process of the Court.

Held

The application was set aside with costs and the court held that:

- i. given that at the outset both parties, the party suing and the party being sued, set out in the heading were inexistent, it was doubtful whether any genuine mistake occurred;
- ii. the applicant failed to give a plausible explanation as to why the proposed amended motion paper was not done earlier;
- iii. the late amendment would cause prejudice to the respondent if granted;

- iv. the proposed amendments would amount to an abuse of process of the Court as they would result in the substitution of new parties to the matter.

This summary is provided to assist in understanding the Court's decision. The full judgment of the Court is the only authoritative document.

Short Summary

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The Court held that amending both parties, the party suing and the party being sued, could not have been the subject of a genuine mistake and accepting late amendments, that is amendments made after the exchange of affidavits, would be prejudicial to the respondent and would amount to an abuse of process. The proposed amendments would have the effect of substituting altogether new parties to the case. Hence, the court held that the grounds of the respondent were well taken, and the application should be set aside with costs.

This summary is provided to assist in understanding the Court's decision and should not be cited as an authority. It does not form part of the reasons for that decision. The full opinion of the Court is the only authoritative document.