THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(COMMERCIAL DIVISION)

MISCELLANEOUS APPLICATION NO.1096 OF 2016
(ARISING FROM HCCS NO. 318 OF 2016)

FANG MIN::APPLICANT

VERSUS

1. UGANDA HUI NENG MINING LTD }

2. GUANGZHOU DONG SONG ENERGY GROUP CO. LTD }

3. L.V. WEIDONG}:: RESPONDENTS

4. MAO JIE }

5. YANG JUNJIA }

6. GUANGZHOU DONG SONG ENERGY GROUP CO. (U) LTD }

BEFORE: THE HON.JUSTICE DAVID K.WANGUTUSI

R U L I N G:

Fang Min, the Applicant brought this application against Uganda Hui Neng Mining Limited (Nominal Defendant), Guangzhou Dong Song Energy Group Co. Ltd, LV Weidong, Mao Jie, Yang Junjia and Guangzhou Dong Song Energy Group Co (U) Limited herein referred to as the 1st, 2nd, 3rd, 4th, 5th, and 6th Respondents seeking orders;

> "*that the 6th Respondent be added as a Defendant to HCCS No. 318 of 2016 MS Fang Min v Uganda Hui Neng Mining Ltd (Nominal Dfendant), Guangzhou Dong Song Energy Group Co. Ltd, Lv Weidong, Mao Jie, Yang Junjia.*"

The Application is grounded on the following;

1. That the 6th Defendant ought to have been joined to the suit as the eventual party to whom the 2nd and 3rd Respondent transferred the nominal Defendants' mineral exploration license in execution and fulfilment of their impugned scheme to deprive it of its said assets.
2. That it is necessary for the 6th Respondent to be added to the suit to enable the court to completely and effectively adjudicate and settle all questions in the suit.

The Application is supported by the affidavit of the Applicant in which she deposes that she filed suit 318 of 2016 to recover damages on behalf of herself and the Nominal Defendant. Nominal Defendant in the case is the 1st Respondent Hui Neng Mining Limited.

The damages she seeks is based on what she claims "is the fraudulent transfer of the Nominal Defendants mineral rights comprised in exploration license No. 1178 in respect of the Sukulu Phosphates reserves allegedly issued by Government of Uganda to the 1st Respondent on 1st August 2013.

That she had now discovered that the exploration license No.1178 which belonged to the 1st Respondent had been transferred to the 6th Respondent which was in turn used to vest the mineral rights to the 2nd, 3rd, 4th and 5th Respondents.

She further deposed that she was aware that the 6th Respondent was incorporated in January 2014, about a year after the mineral license had been awarded to the 1st Respondent and that 3rd Respondent was using the 2nd and 6th Respondents as corporate vehicles to fraudulently expropriate the 1st Respondents property.

Furthermore that the 3rd Respondent held majority shares in the 1st Respondent and 6th Respondent.

It is her contention that the 2nd and 6th Respondents were sham and incorporated to be used by the 3rd Respondent to defeat her interests in the 1st Respondent.

In reply to the Application Yaquong Guo, a director in the 6th Respondent deposed that since the court had earlier struck out all the remedies which directly affected the mineral rights, the 6th Respondent cannot be added in the main suit as a necessary party.

That in any case, the 6th Respondent was incorporated in 2014 long after the meeting at which the 3rd to 5th Respondents resolved to transfer the Exploration License No.1178 from the 1st

Respondent to the 2nd Respondent more so that the 6th Respondent cannot be sued for alleged wrongful acts committed before its incorporation.

That in any case the transfer of the Exploration License to the 6th Defendant cannot be an issue for investigation in the applicant's derivative suit.

Furthermore that at all times, the Applicant knew that the 1st Respondent was holding the Exploration license in trust for the 2nd Defendant. He relied on the Letter of Authorization.

In the suit from which this Application emanates, the Applicant/Plaintiff prayed for 10 reliefs. Out of those reliefs b, c, d, e, f were struck out for the reason that they were in respect of the issuance of license by the Commissioner for Minerals. The issue that now remains is whether the 6th Respondent would be relevant in the hearing and disposal of the remaining prayers.

In the remaining prayers the Applicants seeks for the lifting of the corporate veil of the 2nd Defendant to investigate the shareholders and directors of any involvement in fraud against the 1st Respondent and the Applicant. In my view this investigation might want to look at the stages and movements of the mining license has passed through. It is alleged that it was also transferred to the 6th Respondent. If that is the position, the 6th Respondent would be a necessary party to explain herself on how it obtained the same. It is only then that all the parties to the dispute relating to the subject matter will be brought on board "*so that the dispute may be determined in their presence at the same time without protraction, inconvenience and their multiplicity of proceedings may be avoided"* **Anil Kumar Sing v Skiv Nath Mishra (1995) 3 SCC 147.**

The subject in this case is the mineral exploration of Sukulu Hills. It is from this that the claims by each arises. In a situation such as this, several defendants may be joined in one suit if the right to relief alleged to exist against each of them arises from the same transaction and there is a common question of law or of fact.

Interestingly a Plaintiff who is in doubt from whom redress is to be sought may join two or more defendants in order that the question as to which of the defendants is liable and to what extent may be determined as between the parties.

Furthermore it is necessary to join the 6th Respondent if the orders sought would legally affect its interests. This point was aptly dealt with by **Mulenga JSC in Departed Asians Property Custodian Board v Jaffer Brothers Ltd** in these words;

"I would summarize the position as follows: For a person to be joined on the ground that his presence in the suit is necessary for effectual and complete settlement of all questions involved in the suit one of two things has to be shown.

(1) That orders which the plaintiff seeks in the suit would legally affect the interest of that person and that it is desirable for the avoidance of multiplicity of suits, to have such person joined so that he is bound by the decision of the court in the suit……..."

In the instant case the Plaintiff and the 6th Respondent are all interested in the proceeds from the Sikulu Mines and more so the Plaintiff claims that the 6th Respondent has put his hand in the pie through fraud. This in my view would require the 6th Respondent to be a party.

Lastly, Counsel for the Respondent submitted that since the majority of the prayers had been struck out, the 6th Respondent has no cause of action. My view is that a Defendant can be joined even where the Plaintiff has no cause of action. In this, I am buttressed by **Amon v Raphael Tuck and Sons Ltd 1056 1 ALL ER 273** where in his Lordship dealing with a similar situation held;

"A party may be joined in a suit not because there is a cause of action against it, but because that party's presence is necessary in order to enable the court effectively and completely adjudicate upon and settle all the questions involved in the cause or matter."

In the instant case there are claims that the 6th Respondent has acted as a vehicle in the evolution of the shares and mineral license in the whole business. In such a situation even if the Plaintiff had no cause of action directly against it, its presence might be necessary for court to reach a final and effective decision.

The sum total is that I find this a fit and proper case wherein this court may grant the Applicant's prayer that the 6th Respondent be added as a defendant to HCCS No.318 of 2016 subject to the Limitation Act. I so order.

Costs shall abide the final decision of the suit.

Dated at Kampala this 2nd day of October 2017.

HON. JUSTICE DAVID WANGUTUSI

JUDGE