

THE REPUBLIC OF UGANDA

10

[COMMERCIAL DIVISION]

MISCELLANEOUS APPLICATION NO. 2322 OF 2023

(ARISING FROM CIVIL SUIT NO. 0105 OF 2019)

(FORMERLY CIVIL SUIT NO. 0218 OF 2016 AT LAND DIVISION)

KAZOOBA FRANCIS :::::::::::::::::::: APPLICANT

VERSUS

1. M.K CREDITORS LTD

2. MALE. H. MABIRIZI. K. KIWANUKA

3. SISYE BOGERE ROBERT :::::::::::::::::::: RESPONDENTS

BEFORE HON. LADY JUSTICE HARRIET GRACE MAGALA

RULING

Background

The Applicant borrowed Ushs. 500,000/= from the 1st and 2nd Respondents which was secured by his title deed to the property comprised in Kyadondo Block 206 Plot 2576 at Mpererwe (hereinafter referred to as the suit property). According to the Applicant, the 1st and 2nd Respondents did not give the Plaintiff a copy of the loan agreement although he was asked to sign one. It was averred by the

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5 Applicant that he repaid the loan in full to the 1st and 2nd Respondents but his title deed has never been given back to him despite several demands.

The Plaintiff received information from a one Sentongo that the 3rd Respondent claimed to be the new owner of the property and demolished the structures on the premises. The Applicant's claim is that the 3rd Respondent procured
10 registration on the title deed without a transfer of title from the Plaintiff over his property. The Applicant has never executed any transfer before a one advocate called Joseph Kyazze and the same advocate confirmed it. The Applicant instituted a suit in the High Court Land Division *vide* HCCS 218 of 2016, and the file was transferred to this honorable court and allocated a new file number HCCS
15 No.0105 of 2019.

The Applicant conducted a search from the Ministry of Lands, Housing & Urban Development and found that the suit land was registered in the name of Johnson Bosco Gumisiriza *vide* instrument No. KCCA-00028594 as of 2nd day of June 2016. The Applicant also found that the suit property is currently registered in the name
20 of Katende Frank *vide* Instrument No. KCCA-00071663 as of the 2nd day of July 2020, having acquired the same from Mr. Gumisiriza Johnson Bosco. The Applicant instituted Misc. Application No. 1257/2022 and Misc. Application No. 2322 to amend the plaint to add the said Mr. Johnson Bosco Gumisiriza and Mr. Katende Frank to the suit respectively.

25 **Applications**

These applications were brought by way of chamber summons under Article 126(2)(e) of the Constitution of Uganda, Section 33 of the Judicature Act Cap 13, Sections 96 and 98 of the Civil Procedure Act Cap 71, Order 1 Rule 10(2) & 13,



5 Order 6 Rule 19 & 31 of the Civil Procedure Rules S.I 71-1. These applications were consolidated by the Court with the consent of Counsel of both parties for hearing at once. These applications seek leave to amend the plaint in HCCS No. 0105 of 2019.

Miscellaneous Application No. 1257 of 2022 was supported by an affidavit sworn
10 by the Applicant. He briefly stated that on the 19th day of December 2014, the 3rd Respondent demolished the developments on the land claiming that he was the current registered proprietor. The 3rd Respondent transferred the title to Mr. Johnson Bosco Gumisiriza *vide a* transfer form dated 1st June 2016. He averred that court cannot cancel Johnson Bosco Gumisiriza's name on the title unless he is
15 made a party to the suit and also this will obviate need for a separate suit which might result in a multiplicity of suits.

Miscellaneous Application No. 2322 of 2023 was supported by an Affidavit sworn by the Applicant. He briefly stated that on the 23rd day of June 2023, he was arrested and detained at Central Police Station following a complaint lodged by
20 Mr. Katende Frank. He averred that the basis of the complaint was an order presented by Katende Frank to Namere Police Station purportedly issued by the High Court- Family Division wherein Katende Frank was given powers and authority to fully restore the suit land. However, that this order was a forgery when verified by the High Court-Family Division. He averred that on the 15th day
25 of August 2023, Mr. Katende Frank took forceful possession of his land by constructing a wall fence. He also averred that the land is currently registered in the names of Katende Frank as of 2nd July 2020, having acquired the same from Gumisiriza Johnson Bosco, who acquired the same from the 3rd Respondent. He



5 also averred that Mr. Katende Frank ought to be made a party to the proceedings in order to obviate need for a separate suit.

According to the Affidavit of Service filed for both matters, sworn by Ms. Nabakooza Jemeo Shakirah, the Respondents' counsel of M/s Wetaka, Bukenya & Kizito Advocates was duly served with the pleadings and hearing notices,
10 however, no Affidavits in Reply had been filed as at the time the matters were called for hearing.

Appearance and Representation

The Applicant was represented by M/s Rwakafuuzi & Co. Advocates in both matters while the 2nd Respondent was self-represented and also represented the
15 1st Respondent. The Parties filed written submissions.

Issues for determination

- 1. Whether the Applicant has shown sufficient reasons to allow the granting of this application**
- 2. What remedies are available to the parties?**

20 Determination

The law on amendment of pleadings is laid out in **Order 6 Rule 19 of the Civil Procedure Rules**, provides that;

*"The court may, at any stage of the proceedings, allow either party to alter or amend his or her pleadings in such manner and on such terms as may be
25 just, and all such amendments shall be made as may be necessary for determining the real questions in controversy between the parties".*



5 Applicant's submissions

It was the Applicant's submission that both Mr. Johnson Bosco Gumisiriza and Mr. Katende Frank claim to have some interest in the suit property, therefore, the Applicant seeks leave of court to add the said persons as parties to Civil Suit No. 0105 of 2019.

10 Under **Section 33 of the Judicature Act Cap 13**, the court has powers to grant remedies so that as far as possible all matters in controversy between the parties are completely and finally determined and all multiplicities of legal proceedings concerning any of the matters are avoided.

The court is also empowered under **Order 1 Rule 3 of the Civil Procedure Rules**
15 **S.I 71-1** to join persons in one suit as defendants against whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist, whether jointly, severally or in the alternative, where, if separate suits were brought against those persons, any common question of law or fact would arise.

20 According to **annexure "B"** attached to Misc. Application No. 1257 of 2022, the Applicant/Plaintiff claims that the 3rd Respondent/Defendant fraudulently obtained title in the suit property through the 1st and 2nd
Respondents/Defendants. According to the facts before Court, the Applicant also claims that on conducting a search at the Ministry of Lands, Housing and Urban
25 Development, the Applicant found that Mr. Johnson Bosco Gumisiriza and Mr. Katende Frank had on different dates been registered on the same suit property yet the Applicant has never signed any transfer form. For the stated reasons, the



5 Applicant claims that the said persons ought to be added as parties to the main suit by amending of the plaint.

Pursuant to **Order 1 Rule 10(2) of the Civil Procedure Rules**,

10 *“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 the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose*
15 *presence before the court may be necessary in order to enable the court effectually and completely adjudicate upon and settle all questions involved in the suit, be added”.*

The purpose of joinder of parties to the suit is to avoid multiplicity of suits.

According to the case of **Departed Asians Property Custodian Board vs. Jaffer Brothers Ltd SCCA No. 9 of 1998**, the court while relying on the decision in the case of **Amon vs. Raphael Tuck & Sons Ltd (1956) 1 ALLER p. 273**, stated that;

20 *“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 effectually and completely adjudicate upon and settle all the questions involved in the cause or matter.*

1st and 2nd Respondents’ Submissions

25 It was submitted for the 1st and 2nd Respondents that from the provisions of Order 1 rule 10(2) of the Civil Procedure Rules as amended, there were only two grounds of for the addition of a party; first he must be one who ought to have

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5 been joined or whose presence may be necessary in order to enable the court to effectually and completely to adjudicate upon and settle all questions involved in the suit. It was submitted for the 1st and 2nd Respondents that the consolidated applications did not satisfy the test as per the law.

The 1st and 2nd Respondents arguments in opposition to the Applications were
10 based on the following grounds:

(a) That the Applicant has no cause of action against the intended Defendants

In the case of **G.M Combined Ltd vs The Chief Registrar of Titles HCMA No. 415 of 1995** Okello, J in refusing the Application held that:

15 *"Even if the application had to be brought under O.1 rule 10(2) of the CPR it seems to me that under that rule it is plainly implied that the defendant to be added must be a defendant against whom the plaintiff has some cause of complaint which ought to be determined in the suit and that it was never intended to apply where a person to be added as a defendant is a person against whom the plaintiff has no claim and does not desire to prosecute..."*

20 *This rule does not authorize the joining of a total stranger against whom the applicant/plaintiff has no claim..."*

It was submitted that the Applicant had no claim or cause of action against the intended Defendants. The 2nd Respondent went on to define what a cause of action was. He cited and relied on the case of **Tororo Cement Co. Ltd vs Frokina**

25 **International Co. Ltd, SCCA No. 2 of 2001**, where Tsekooko JSC, found that:

"...that if a plaint shows that the plaintiff enjoyed a right, that right has been violated and that the defendant is liable, then, in my opinion, a cause of action has been disclosed..."



5 It was submitted for the 1st and 2nd Respondents that the Applicant does not show how the intended defendants violated any of his rights. His applications only show how the property moved from one person to another. That allowing this application would open up a can of worms where each time the property changed hands, the applicant would file an application to add such new registered owner
10 as a party to the suit. That the Applicant has never dealt in any way with the intended defendants and these applications ought to be dismissed.

(b) The presence of the intended defendants is not required

While arguing this ground, the 1st and 2nd Respondents relied on the case of **Kampala International University vs Hima Cement Limited HCCS No. 0304 of**
15 **2006** where Bamwine J held that:

*“...an addition cannot be for the sake of it. There must be a compelling reason to do so...in my view, to effectually and completely adjudicate upon and settle the question of the alleged breach and the parties’ obligations under the contract, this court would not require URA’s presence before it as a party. Its
20 presence as a witness for either party would suffice”.*

The 2nd Respondent also relied on the decision of Eva Luswata Kavuma, J (as she then was) in **Murisho & 4 ORS V. Kalisa & Anor Jinja High Court MA No. 0437 OF**
2016 to firmly state that adding the intended defendants to the suit who owned the same way after the suit had been filed would not in any way improve the
25 court’s ability to effectively and completely adjudicate the dispute between the applicant and the 1st to 3rd Respondents.

(c) That adding the intended defendants to the suit is not necessary to determine the dispute before court



5 In the case of **BM Consult (1999) LTD V Uganda National Framers Federation & Anor. Commercial Court MA No. 51 OF 2015**, Madrama, J (as he then was) ruled that for a party to be a necessary party, the presence of the party must be necessary for a complete and effectual resolution of all questions involved in the suit.

10 The 2nd Respondent argued that the claim against the Respondents is for the sale of his mortgaged property. The intended defendants were never party to any of those transactions and therefore not be said to be necessary parties for effectual resolution of the dispute between the applicant and respondents.

15 (d) That the Applicant wants to resurrect MA 367 of 2016

For the 1st and 2nd Respondents it was submitted that the Applicant was trying to revive the above application. The said application was for a temporary injunction and it was dismissed by the learned trial judge because the applicant was not in possession of the suit property and the structures that were on the said property
20 were demolished by the 3rd Respondent. As such, there was no status quo to maintain and the applicant's only recourse was to challenge the legality of the process by which the 3rd Respondent acquired the suit property. The Learned Trial judge in dismissing the application for a temporary injunction held that:

25 *"I cannot find any inconvenience that would be occasioned on the applicant since there is no house. I have not found any evidence to show the alleged destruction or even evidence of occupation. I therefore find that there is no possible irreparable injury, status quo to maintain, no convenience, balanced or not, to consider. In the circumstances this application is dismissed with costs".*



5 Applicant did not appeal the decision of the learned trial judge.

Determination

Under **Section 33 of the Judicature Act Cap 13**, the court has powers to grant remedies so that as far as possible all matters in controversy between the parties are completely and finally determined and all multiplicities of legal proceedings
10 concerning any of the matters are avoided.

The court is also empowered under **Order 1 Rule 3 of the Civil Procedure Rules S.I 71-1** to join persons in one suit as defendants against whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist, whether jointly, severally or in the alternative,
15 where, if separate suits were brought against those persons, any common question of law or fact would arise.

I have taken into consideration the background to these Applications, the submissions of both the Applicant; and the 1st and 2nd Respondents.

One of the prayers by the Applicant in the main suit is for a declaration that the
20 transaction of the 1st and 2nd Defendants / Respondents with the 3rd Defendant / Respondent was null and void for fraud and illegality; and the 3rd Defendant/ Respondent acquired no lawful interest in the suit land. I agree with the 2nd and 3rd Respondents that the property has since changed hands and there is no telling whether it shall not change hands again with the result that the main suit shall
25 not be heard and disposed of in a timely manner because of the filing of applications to add a party or parties.

However, I am alive to the fact that whatever decision this Court makes in respect of the main suit shall without a doubt affect the intended defendants. In line with



5 the right to a fair hearing as enshrined in the Constitution, it is only fair and just that the intended defendants are added to the suit to be given an opportunity to be heard.

Adding the intended defendants to the suit would not prejudice the Respondents in anyway. It would also curtail multiplicity of suits. The purpose of joinder of
10 parties to the suit is to avoid multiplicity of suits. According to the case of ***Departed Asians Property Custodian Board vs. Jaffer Brothers Ltd SCCA No. 9 of 1998***, the court while relying on the decision in the case of ***Amon vs. Raphael Tuck & Sons Ltd (1956) 1 ALLER p. 273***, stated that:

15 *“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 effectually and completely adjudicate upon and settle all the questions involved in the cause or matter.*

I have also observed that the Respondents did not rebut the averments of the Applicant in paragraphs 8,14,15, 16 and 17 of Misc. Application No. 2322 of 2023.
20 This also goes for the averments in paragraphs 6,7 and 8 of the same application in respect of the *status quo* of the suit property. That whereas the Applicant does not have the title deed to the suit property, he is in possession of the same and the structures that were demolished by the 3rd Respondent were rebuilt.

The presence of the intended defendants is necessary for court effectually and
25 completely determine the real questions in controversy in the cause.

In the case of ***Gaso Transport Services Ltd vs. Martin Adala Obene SCCA No. 4 of 1994 cited in [1990-1994] EA 88***, the court laid out the following considerations to be taken into account by a court before allowing amendment:



- 5 a) The amendment must not work an injustice to the other side;
b) Multiplicity of proceedings should be avoided as far as possible and
amendments which avoid multiplicity should be allowed;
c) An application which is made mala fide should not be granted; and
d) No amendment should be allowed where it is expressly or impliedly
10 prohibited by the law

The Applications meet the criteria set out in the **Gaso Case** and for the above reasons, the Applicant is hereby granted leave to amend the Plaintiff by adding Johnson Bosco Gumisiriza and Katende Frank as 4th and 5th Defendants respectively.

15 **Issue No. 2: What remedies are available to the parties?**

The Court has already observed that the title deed to the suit property has changed hands three (3) times and there is a high possibility that this could continue happening between now and final determination of the Suit. For this reason, the Court hereby issues an injunction restraining the Commissioner Land
20 Registration from entertaining any transactions on the suit property comprised in **Kyadondo Block 206 Plot 2576 land at Mpererwe** from the date of delivery of this Ruling until the hearing and final determination of ***HCCS 0105 of 2019: Kazooba Francis vs M.K Creditors Ltd. & Others.***

According to **Section 27 of the Civil Procedure Act, Cap 71**, costs shall follow the
25 event unless court decides otherwise. The costs of the Applications shall abide the outcome of the Main Suit.

The Consolidated Applications are allowed in the following terms:



1. That the Applicant is granted leave to amend the Plaintiff by adding Johnson Bosco Gumisiriza and Katende Frank as 4th and 5th Defendants respectively;
2. That the amended plaintiff should be filed and served onto the 1st, 2nd and 3rd Respondents within fourteen (14) days from the date of delivery of this ruling;
3. That the amended plaintiff and summons to file should be served onto the 4th and 5th Defendants within the statutory time of effecting service of summons and plaintiff from the date of delivery of this ruling;
4. That this court hereby issues a temporary injunction restraining the Commissioner Land Registration from entertaining ANY transactions on the suit property comprised in **Kyadondo Block 206 Plot 2576 land at Mpererwe** from the date of delivery of this Ruling until the hearing and final determination of ***HCCS 0105 of 2019: Kazooba Francis vs M.K Creditors Ltd. & Others.***
5. That the costs of the consolidated applications shall be in the cause.

Signed and dated at Kampala this 23rd day of May 2024.



Harriet Grace MAGALA

Judge

Delivered online (ECCMIS) this 28th day of May 2024.