

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

MISC. APPLICATION NO. 415 OF 1995

G.M COMBINED (U) L.T.D:.....:APPLICANT

VERSUS

THE CHIEF REGISTRAR OF TITLES:.....:RESPONDENT

THE HONOURABLE MR. JUSTICE G.M. OKELLO.

RULING:

The main application here was brought under section 190 of the R.T.A. calling upon the Chief Registrar of titles to substantiate and uphold the grounds for his refusing to amend the Register Book and reinstate the applicant as proprietor of those lands specified in the Application.

When the Application was called for hearing, Mr. Mulenga S.C. whose client A.K. Detergent (U) Ltd. is not a party to the application verbally applied to have his said client joined in the application as Co-Respondent. He made the application under O.1 r. 10 (2) of the Civil Procedure Rules.

The grounds on which the application as based were:-

(1) that his client is the registered proprietor of the property whose registration G.M Combined (u) Ltd. (Applicant in the main Application) seeks to alter to reinstate itself as its registered proprietor.

(2) that the presence of his client was necessary to enable the court to effectually and completely adjudicate upon and settle all questions involved.

Mr. Walubiri Counsel for the Respondent had in principle no objection to A.K. Detergent (U) Ltd. being joined in the Application as Co—Respondent, But Mr. Kavuma Kabenge, counsel for the Applicant strongly resisted the application.

It is, I think pertinent to acknowledge at this stage that O.1 r.10 (2) of the Civil Procedure Rules does empower the court with or without application to join a party either as plaintiff or as defendant 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 adjudicate upon and settle all questions involved. To act under the above rule, the court had first to satisfy itself that the defendant to be joined was one who ought to have been joined or whose presence was necessary for the effectual and complete adjudication upon and settlement of all the questions involved.

As pointed out correctly in my view, by my brother **Justice Katusi** in **FATUMA OSMAN HUSEIN Vs. M.U. PATEL H.C.C.S NO. 623/94.** the defendant to be added under the above rule was implied to be one against whom the plaintiff has some cause of action to be determined in the suit. It would seem therefore that a stranger against whom the plaintiff has absolutely no cause of action would not be added under this rule.

In the instant case, the application to join the applicant was based on the ground that “ the presence of the applicant before court was necessary to enable court to effectually and completely adjudicate upon and settle all questions involved because he is the Registered proprietor of the lands whose Registration G.M Combined (U) Ltd. Seeks to alter to reinstate itself as its registered proprietor. On that ground Mr. Mulenga invited me to allow the application and to order that the applicant be joined in the application as co-respondent. He cited **Misc. Application No.143/93 Makerere Properties .vs. the Chief Registrar of Titles** where he said in a similar situation the court allowed a joinder.

I have had the opportunity to read the brief record of the proceedings in that case. The Misc. Application was made under section 185 of the RTA for order that the Chief Registrar of Titles cancels the name of X as a registered proprietor of the land specified in that application. In the course of hearing the main application, an application was made by counsel for the Registered Proprietor of the land in question seeking to be joined in the main application as a Co—

Respondent. The application was formally made under **O. 1. r.10 (2) of the CPR**, But before that application for joinder could be heard, the main application was withdrawn. That being so, the court ruled that the main application having been withdrawn, the application for joinder was left as a separate proceeding. No order was therefore made for the joinder in that case. It follows that that case is not authority for saying that a registered proprietor of a land could be joined as Co-Respondent in application brought against the chief Registrar of Titles under **section 190 of RTA**. There are however authorities which indicate that this court has on a number of occasions declined applications to join other persons as Co—Respondent in Application brought under section 190 of the RTA.

In **Fatuma Osman Hussein Vs. M.U Patel H.C.C.S. No. 623/94 Katutsi J.** considered the applicability of 0.1.r.10 (2) of the CPR in a similar situation and reflected it in the following words,

“Even if the application had to be brought under O.1 r. 10 (2) CPR it seem 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 defendant is a person against whom the Plaintiff has no claim and does not desire to prosecute any.”

As indicated earlier in this ruling, I share the above view. This rule does not authorize the joining of a total stranger against whom the applicant/ plaintiff has no claim and does not desire to prosecute any. A plaintiff has a right to choose who he wants to proceed against.

In the instant case, there is no indication that the applicant has any claim against those seeking to be joined in the application as co-respondent looking at section 190 of the RTA, there is no way the respondent seeking to be joined in the application can be directly affected by a ruling based on that section.

I have been asked to invoke the inherent power of the court to join the applicant to the application. I find no justification to resort to the inherent section because no injustice is likely to be occasioned to the applicant by the refusal to join him in the Application since the main application merely calls upon the Chief Registrar of Titles to defend his reasons for carrying out

his statutory duties in the manner he did it. Explanation from some other quarters is not called for. In the circumstances I decline the application to join the registered proprietor as a co-respondent to the main application.

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G.M OKELLO

JUDGE

18/10/95