THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

LAND DIVISION

MISCELLANEOUS APPLICATION NOs. 365 OF 2007 AND 921 OF 2011

(Arising out of Civil* Suit *No. 525 of 2006)

MUGALAASI HOLDINGS.....APPLICANT

VERSUS

1. **MUGOMBA DAVID**
2. **MUGOMBA JAMAT**
3. **JAMIL KAYEMBA**
4. **KULABAKO ROSE**
5. **BIZIRIKO BOSCO**
6. **CITY COUNCIL OF KAMPALA**

(KAMPALA CITY COUNCIL AUTHORITY).....RESPONDENTS

BEFORE HON. LADY JUSTICE PERCY NIGHT TUHAISE

RULING

These were two applications by Notice of Motion brought under Order 1 rules 2 & 3 of the CPR and section 98 of the Civil Procedure Act, cap 71 and section 33 of the Judicature Act. They were argued together by both Counsel since each concerned addition of parties for orders that:-

(a) The respondents be joined as co defendants in the main suit.
(b) The costs of this application be provided for.

The applications are supported by the affidavits of **Pius Mugerwa Mugalaasi** the Managing Director of the applicant company and is based on the grounds that:-

1. The applicant filed civil suit no. 525 of 2006 against a one Ephraim Ntanganda for erecting buildings in a road reserve which served as an access to the applicant's plot of land comprised in Block 12 Plot 213.
2. The access road which was originally comprised in Block 12 Plot 215 was sub divided into several plots of land some of which were transferred to the respondents.
3. The acts complained of in civil suit no. 525 of 2006 were committed with the approval of the 6th respondent.

4. That if the respondents are not joined as co defendants it will cause multiplicity of suits as separate suits would be brought against them.

The application was opposed by the respondents who filed affidavits in reply to the respective applications.

In his submissions, learned Counsel for the applicant, John Mike Musisi, relied on the evidence as deponed to in the affidavits in support by Pius Mugerwa Mugalaasi the Managing Director of the applicant company. The facts as brought out in the said affidavits are that the applicant filed civil suit no. 525 of 2006 against Ephraim Ntanganda for a declaration that land comprised in Block 12 Plot 215 at Nakivubo is an access road to Plot 213 owned by the applicant, a permanent injunction restraining him from carrying out construction on the said plot and general damages for the inconvenience caused to the applicant as a road user. Despite an interim order of injunction to the applicant, the said Ephraim Ntanganda sub divided plot 215 into several plots namely 1629, 1636, 1637, 1638 1639, 1640 and 1641. He subsequently transferred titles to plot 1640 to the 1st and 2nd respondents, plot 1629 to the 3rd respondent, and plots 1636 – 1639 to the 4th respondent and retained plot 1641 in his names. As regards the 5th respondent, he has on several occassions represented himself to the applicant as the current owner of plots 1636 – 1639. The applicant averred that as successors in title to Ephraim Ntanganda, the respondents are necessary parties to civil suit no. 525 of 2006 as the final and interlocutory orders made in the main suit will directly affect them. As regards the 6th respondent, the applicant's affidavit evidence is that Ephraim Ntanganda's defence to suit civil suit no. 525 of 2006 discloses that he (Ntanganda) was granted permission and approval by the said respondent to go ahead and construct a building thus blocking access to the applicant's plot; and that it is necessary that the said respondent be joined as a co defendant in civil suit no. 525 of 2006 so that all questions arising out of the dispute can be resolved at once. Counsel for the applicant submitted that common questions of law would arise if separate suits were brought; that there is a common transaction or series of transactions; and that there is a common right to relief by the plaintiff against the intended defendants.

The affidavits in reply of Mugomba David the 1st respondent and Jamil Kayemba the 3rd respondent to miscellaneous application no. 921 of 2011 are briefly that they and the 2nd respondent are *bona fide* purchasers for value of the mentioned property, that they conducted searches before purchasing the properties, and that their respective properties was erected in accordance with approved plans of the controlling authority. The affidavit of Mugomba David further added that he signed a consent judgment in civil suit no.224 of 2008, annexture **B**, which compromised civil suit no.525 of 2006. Counsel for the 1st, 2nd, 3rd, and 5th respondents submitted that the application had been overtaken by events since the plot alleged to be an access had been developed, and for the 5th respondent, Counsel contended that he has never owned the property in question and was wrongly dragged to court. He contended that the application was filed in bad faith and prayed that it be dismissed with costs. The 6th respondent's affidavit in reply was deponed to by Segagala Henry who averred that Block 12 Plot 215 was never gazetted as an

access road and that Block 12 Plot 213 has an alternative access to the nothern boundary of the land. The 6th respondent's Counsel submitted that the application lacks merit and should be dismissed with costs.

I have looked at the application and all affidavits on this matter, including the pleadings in civil suit no. 525 of 2006. I have also analysed the submissions of Counsel and the law applicable to the situation.

Order 1 rule 3 of the CPR provides as follows:-

> ***"All persons may be joined 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 questions of law or fact would arise."***

The two applications which were argued as one application seek that the respondents be added as co defendants in civil suit no. 525 of 2006. The criteria to apply in determining whether or not the respondents should be added as parties lies in Order 1 rules 1 and 3 quoted above. The respondents' affidavit evidence and the submissions of their Counsel have delved into the merits of the main suit literally raising their defences to the said suit. This court finds it pre mature if not pre empting at this stage to go into the merits of the case. The 1st, 2nd, and 3rd respondents' claim that they are *bona fide* purchasers for instance, or the 5th respondent's contention that he has never owned the property in question, will be addressed by court in the main suit when court is determining the rights of the parties to the properties in dispute. Similarly, the 6th respondent's affidavit evidence that Block 12 Plot 215 was never gazetted as an access road and that Block 12 Plot 213 has an alternative access to the nothern boundary of the land is also appropriately evidence to be raised as a defence to justify their alleged actions in the suit property which are being challenged by the applicant/plaintiff.

The 5th respondent claims that the application had been overtaken by events since the plot alleged to be an access had been developed. Counsel for the 5th respondent contended that the said respondent has never owned the property in question and was wrongly dragged to court. I note that the applicant/plaintiff was not party to annexture **B** to his affidavit in reply, the consent judgment, or to the suit under which it arose. Neither were the defendants in that case parties to civil suit no. 525 of 2006 under which the instant applications arise. That being the case, the consent judgment does not bar the plaintiff/applicant from filing the suit pending before this court.

In my opinion applying the critria set out in Order 1 rule 3 of the CPR, the applicant has a right of relief against all the respondents in no. 525 of 2006. If separate suits was brought by the applicant against each of the respondent in respect of the same suit property, common questions of law and fact would arise. Addressing such suits separately would definitely lead to multiplicity of suits. I also find that it is necessary that the said respondents be joined as co

defendants in civil suit no. 525 of 2006 so that all questions arising out of the dispute can be resolved at once. All the respondents could rightly be joined as co defendants in civil suit no. 525 of 2006 under Order 1 rule 3 of the CPR.

In the premises, and on the foregoing authorities, I find that the applicant has satisfied his claim against all the respondents. I allow application nos. 365 of 2007 and 921 of 2011. I accordingly grant the following orders as prayed by the applicant:-

(i) The respondents be joined as a co defendant in in civil suit no. 525 of 2006.
(ii) The costs of this application abide the results of civil suit no. 525 of 2006.

Dated at Kampala this 25th day of October 2012.

Percy Night Tuhaise.

JUDGE.