

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MBARARA
HCT-05-LD-MA-0308-2022

(Arising from HCT-05-LD-CS-0102-2022)

TURINAWA AMOS ::::::::::::::::::::::::::::::::::: APPLICANT
VERSUS

TURYAHABWE SWAIB ::::::::::::::::::::::::::::::::::: RESPONDENT

BEFORE: HON LADY JUSTICE JOYCE KAVUMA

RULING

Introduction.

[1] This is an application by way of Chamber Summons (ex parte) brought under **Order 1 rule 14** of the CPR seeking for leave to be granted to the Applicant to issue a third-party notice to the Respondent in relation to the main suit and costs to **e** in the main cause.

The grounds upon which this application was based were laid out briefly in the summons as;

1. That there is a pending suit whereby Kainamula Gloria has filed a suit against the Applicant herein.
2. That in the said suit the cause of action arose from a parcel of land that the Respondent sold to the Applicant without disclosing that he had already mortgaged it.
3. The Applicant is entitled to indemnity as against the Respondent in case he is ordered to indemnify the Plaintiff in the main suit.

4. That the third-party notice has already been served onto the Applicant and it is necessary that the Respondent be party to the suit as his presence in the suit is very necessary in the given circumstances.
5. That a third-party notice will not occasion the parties any prejudice and/or cause any miscarriage of justice.
6. That it is in the interest of justice for this application to be granted.

This application was supported by the affidavit sworn by Mr. Turinawe Amos the Applicant wherein he averred that;

1. That the Applicant is a defendant in HCT-05-LD-CS-0102-2022 against Turyahabwe Swaib.
2. That the said suit cause of action arose from a parcel of land that the Respondent Turyahabwe Swaib sold to him.
3. That at the time of purchase, the Applicant did due diligence, went to the LC1 Chairperson Lugazi Cell and confirmed that the land was free from all encumbrances.
4. That the LC1 chairperson went ahead and stamped the sale agreement.
5. That the Applicant later sold that the said piece of land to Kainamula Gloria who has now filed the main the main suit against him for breach of contract.
6. That Kainamula Gloria is now being evicted by FINCA bank due to a mortgage.

7. That the Applicant is entitled to indemnity as against the Respondent.
8. That the third-party notice is necessary for the Respondent's presence as a party to the main suit so as to resolve the real questions in controversy in the suit.

Representation.

[2] The Applicant was represented by M/s Asingwire & Kakuru Advocates.

Analysis and decision.

[3] The law governing this kind of application is provided for under **Order 1 rule 14** of the CPR. According to that provision, where a Defendant claims to be entitled to contribution or indemnity over or against any person not a party to the suit, he or she may by leave of the court, issue a notice called a third-party notice.

Order 1 rule 14 of the CPR is limited to claims to contribution or damages from a third party that would otherwise be a stranger to the suit. (See Yafesi Walusimbi vs Attorney General [1959] EA 233 and NBS Television Limited vs Uganda Broadcasting Corporation MA no. 421 of 2012).

It is trite law that for a third party to be legally joined to a suit, the subject matter as between the defendant and the third party must be the same as that between the Defendant and the Plaintiff, and similarly, the cause of action between the Defendant and the third party must be the same as the original cause of action.

[4] From the foregoing, for the Applicant to succeed on such an application, they have to satisfy the following;

1. That he or she has sufficient grounds to join the Respondent as a third party.
2. The subject matter between the Applicant and Respondent is the same as the subject matter between the Plaintiff and the Defendant and the original cause of action.
3. The Applicant claims indemnity or contribution from the Respondent.
4. The Plaintiff will not suffer any prejudice if the application is granted.
5. It is in the interest of justice that the suit be heard on its merits.

That the Applicant has sufficient grounds to join the Respondent as a third part and the subject matter between the Applicant and Respondent is the same as the subject matter between the Plaintiff and the Defendant and the original cause of action.

[5] In the instant application, the applicant seeks to add the Respondent as a third party to the main suit. According to paragraphs 3, 4, 5 and 6 of the Applicant's affidavit in support of this application, the Applicant deposed that he bought the suit land from the Respondent Turyahabwe Swaib. To prove this, he annexed a copy of the sale agreement clearly made between the Applicant and the Respondent Turyahabwe Swaib. The Applicant further deposed that having conducted his due diligence he was satisfied that the suit land

indeed was free from encumbrances but unknown to him, it had been encumbered by a mortgage in favour of the Respondent yet he had sold the same land to the Plaintiff in the head suit.

This application falls squarely within the scope of the first aspect of this rule.

Furthermore, it is clear that the subject matter between the Applicant and Respondent Turyahabwe Swaib is the same as the subject matter between the Plaintiff and the Defendant and original cause of action. Moreover, the Applicant's case is that the Respondent Turyahabwe Swaib was responsible.

This court is therefore satisfied that the Applicant has fulfilled the first two principles laid out above.

The Defendant claims indemnity from the Respondent.

[6] In **Eastern Shipping Co. vs Quah Beng Kee (1), [1924] AC 177** quoted with authority in **Edward Kironde Kagwa vs L Costaperaria and another [1963] 1 EA 213**, it was held that;

"A right to indemnity generally arises from contract express or implied, but it is not confined to cases of contract. A right to indemnity exists where the relation between the parties is such that either in law or in equity there is an obligation upon the one party to indemnify the other. There are, for instance, cases in which the state of circumstances is such that the law attaches a legal or equitable duty to indemnify arising from an assumed

promise by a person to do that which, under the circumstances, he ought to do. The right to indemnity need not arise by contract; it may (to give other instances) arise by statute; it may arise upon the notion of a request made under circumstances from which the law implies that the common intention is that the party requested shall be indemnified by the party requesting him; it may arise (to use Lord Eldon's words in Waring v. Ward; a case of vendor and purchaser), in cases in which the court will 'independent of contract raise upon his (the purchaser's) conscience an obligation to indemnify the vendor against the personal obligation' of the vendor."

In line with the above authority, it is clear in the instant application, from the perusal of the Applicant's affidavit in support of this application and annexures, that there was no express undertaking by the Respondent Turyahabwe Swaib to indemnify the Applicant against any third-party claims, proceedings, damages and costs that could arise out of the sale agreement he had made with the Respondent.

However, I note that according to the Applicant's affidavit in support of the instant application, he pointed out that he had done all the necessary due diligence and satisfied himself that the suit land was free from any incumbrances before buying it from the Respondent Turyahabwe Swaib. That he had even already fully paid the Respondent and had gone ahead to sale the suit land to a third party the Plaintiff in the main suit. Which third-party was now suing him.



These averments show that the Respondent had a duty to sell to the Applicant land that was free from any incumbrances. In the event of such encumbrances, I find that the Applicant is entitled to indemnity from the Respondent against any such third-party claims against him in the main suit in relation to the suit land.

I find that the Applicant has satisfied the third requirement.

[7] A perusal of the pleadings shows the application was filed within time on 29th September 2022, with the knowledge of the Plaintiff, the intention of which is to bring all the concerned parties in this transaction before court and have the question regarding liability determined at once.

I also find that the Plaintiff in the main suit shall not be prejudiced by grant of this application. I therefore find that this is a proper case where a third-party notice should issue.

Accordingly, I grant the Applicant leave to issue a third party notice together with a copy of the plaint upon the Respondent.

The same should be effected within fourteen days from the date hereof.

The costs of this application shall be in the cause.

I so order.

Dated, delivered and signed at Mbarara this.....^{9th}.....day of ^{December}.....2022.



Joyce Kavuma
Judge