

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT FORT PORTAL
MISCELLANEOUS APPLICATION No. 092 OF 2019
ARISING FROM CIVIL SUIT NO. 011 OF 2017**

1. BANAALYA BOSCO

2. MUTEESA ANTHONY

3. MUTESASIRA HERBERT (Administrators

Of the estate of the late YOHANA KIIZA) ::::::::::: APPLICANTS

VERSUS

1. ISSA ISAGARA

2. KOBUSINGE LILLIAN ::::::::::: RESPONDENT/PLAINTIFFS

AND

CHINA RAILWAY SEVENTHY GROUP :::::::

RESPONDENT/DEFENDANT

BEFORE: HON JUSTICE VINCENT EMMY MUGABO

RULING

This application is brought under Order 1 r.13; Order 52 r.1 Civil Procedure Rules (CPR), and Section 98 Civil Procedure Act (CPA) for orders that the Applicants be joined as plaintiffs in High Court Civil Suit No. 011 of 2017, that the applicants be granted leave to amend the plaint and for the provision of costs to be made.

Background

The 1st and 2nd respondents/plaintiffs filed Civil Suit No. 011 of 2017 against the 3rd respondent/defendant for among others trespass to land, general and special damages by virtue of the 3rd respondent's extraction of murram from land comprised in Kibale Block 10 Plot 3 at Kitwe and Kyaitama (the suit land). At the time of filing this suit, the 1st and 2nd

respondents were the registered proprietors of the suit land as administrators of the estate of the late Grace Nakintu. The applicants as administrators of the estate of the late Yohana Kiiza filed Civil Suit No. 006 of 2019 against the 1st and 2nd respondents claiming that the suit land belongs to the estate of the late Yohana Kiiza. By consent of the parties in Civil Suit No. 006 of 2019, the suit land was adjudged to belong to the estate of the late Yohana Kiiza and the applicants herein were substituted as the registered proprietors. The applicants now seek to be added as plaintiffs in Civil Suit No. 011 of 2017 since they are now the rightful owners of the suit land.

As contained in the affidavit of Banaalya Bosco, the 1st Applicant, the application is premised on the ground that the applicants are now the registered proprietors of the suit land, the addition of the applicants as plaintiffs to the suit would assist court deal with all matters in controversy at once and that it would be just and equitable for this application to be allowed.

Issa Isagara, the 1st respondent deposed an affidavit in reply stating that the applicants just want to hijack the suit without just cause and that this application is defective, frivolous and an abuse of court process.

Robert Kyaligonza, an advocate with Kaahwa, Kafuuzi, Bwiruka & Co. Advocates swore an affidavit in reply for the 3rd respondent opposing this application on ground that the 1st and 2nd respondents have since lost interest in the suit property and as such their cause of action cannot be maintained against the 3rd respondent. Further that since the 1st and 2nd respondents' cause of action is extinguished, there is therefore no valid suit by the 1st and 2nd respondents to which the applicants can be added

as plaintiffs.

Representation and hearing

The applicants are represented initially by Mukiibi & Kyeyune Advocates and later by Mr. Mugabe Robert of Mugabe-Luleti & Co. Advocates. The 1st and 2nd respondents are represented by Ahabwe James & Co. Advocates while learned counsel Ruth Ongom represented the 3rd Respondent. The hearing proceeded by way of written submissions. Written submissions were filed on behalf of all the parties except for the 1st and 2nd respondents. I have considered the Advocates' submissions in this ruling.

Consideration by court

A party maybe allowed to be joined to existing proceedings, the enabling law being **Order 1 r.1, 10(2) & 13 CPR**. And specifically the provisions of rule 10(2) are that;

“The court may at any stage of the proceedings either upon or without the application of the either party and on such terms as it 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 have been joined whether as plaintiff or defendant or whose presence before the court may be necessary in order to enable the court efficiently and completely adjudicate upon and settle all questions involved in the suit be added.”

To summarise that provision, the applicants need to satisfy court that;

- They are persons who ought to have been joined to the suit.

- Their presence is necessary to enable this court to effectively and completely adjudicate upon and settle all questions in dispute in order to avoid duplicity of suits and
- The application may be made by any party to the suit or not in the suit or the court on its motion.

Turning to the present case, the applicants are now the administrators of the estate of the late Yohana Kiiza and registered proprietors of land comprised in Kibale Block 10 Plot 3 at Kitwe and Kyaitama, which property is the subject of Civil Suit No. 011 of 2017 before this court. At the time of filing the suit, it was the 1st and 2nd respondents who were the registered proprietors of the suit land. It is quite clear that if the suit is left to proceed without the applicants who are the registered proprietors of the suit land, it is highly possible that their rights will be determined without giving them a right to be heard.

I have carefully considered the judgment of the Supreme Court in ***Deported Asians Property Custodian Board Vs Jafer Brothers Ltd Supreme Court Civil Appeal No. 9 of 1998*** as relied upon by the applicants' counsel. Particular guidance is offered by Mulenga JSC (as he then was). The honourable judge noted that 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, it has to be shown that the orders, which the plaintiff seeks in the suit would legally affect the interest of that person and that it is desirable, for avoidance of multiplicity of suits, to have such a person joined so that he is bound by the decision of the court in that suit.

Counsel for the 3rd respondent argued that the effect of the consent judgment in Civil Suit No. 006 of 2019 is that 1st and 2nd respondents lost

the right as plaintiffs in Civil Suit No. 011 of 2017 since they were no longer proprietors of the suit land. Further that this application to add parties cannot stand as there is no valid suit against the 3rd respondent and that it is settled law that a suit that does not disclose a cause of action cannot stand.

I note that the rationale for adding or substituting parties to civil proceedings as stated in the case of the ***Departed Asians (supra)*** is to aid court to determine the real and all questions before it to avoid a multiplicity of suits. The applicants maintain that the 1st and 2nd respondents are beneficiaries of the estate of the late Yohana Kiiza. As to whether this fact alone is sufficient for the 1st and 2nd respondents to found a cause of action against the 3rd respondent is a question to be determined in the main suit. In any case, the 3rd respondent as defendant can always have remedies against a party who drags them to court without a reasonable cause of action.

I am satisfied that the applicants, who are now the registered proprietors of the suit land in Civil Suit No. 011 of 2017 need to be added to the said suit because they now have the legal right to prosecute the same. This application is granted and costs would abide by the outcome of the main suit.

The applicants are granted leave to amend the plaint in Civil Suit No. 011 of 2017 to give effect to this ruling within 14 days from the date of this ruling. Any response to the amended plaint shall be filed and served within 14 days thereafter. Any additional witness statements by either party shall be filed by the 4th of August 2022.

I so order

Date at Fort Portal this 29th day of June 2022.



Vincent Emmy Mugabo

Judge

The Assistant Registrar will deliver the ruling to the parties



Vincent Emmy Mugabo

Judge

29th of June 2022.