

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT JINJA
HCT-03-LD-MA- 0148 - 2023
(ARISING FROM HCT-03-LD-CS-07-2020)

MUGARURA JAMES :::APPLICANT

VERSUS

1.TUMWAKIIRE RONAUS

2. BAKINYANGA EDITH:::RESPONDENTS

Application for Joining of Parties

Held: *Application granted with Orders in this Ruling.*

BEFORE: HON. JUSTICE DR. WINIFRED N NABISINDE

RULING

This Ruling follows an Application by Chamber Summons seeking for Orders that:-

- 1. The Applicant be allowed to join Civil Suit No.007/2020.**
- 2. The Respondents be ordered to ammend pleadings to allow the participation of the Applicant in Civil Suit No.007/2020.**
3. That a warrant of attachment doth issue against the Respondent by attaching the subject land or house before Judgment.
4. Costs of the Application be provided for.

The grounds upon which this application are that:-

1. The Applicant claims interest in the suit land and that disposing off the suit land without his participation will be to his disadvantage.
2. The 1st Respondent has intentions of misleading the Honourable Court as she has no proprietary interest in the suit subject matter.
3. The Applicant shall suffer adversely as there may be nothing to attach in execution of a decree that may be passed against the Respondents since the suit subject matter belongs to the Applicant.

4. It is in the interest of justice that a Warrant of attachment be issued against the Respondents for the suit land and or property.

The Application is also supported by the Affidavit of Mugarura James the Applicant in this matter. The gist of the Applicant's case lies in his affidavit where he averred that:-

1. He bought land with a house thereon from the 2nd Respondent and that he executed a land sales agreement and the same was witnessed by the 1st Respondent as per sales agreement marked annexure "A".
2. That the 1st Respondent filed **Civil Suit No.007 of 2020** against the 2nd Respondent without involving the Applicant yet he is the rightful owner of the suit subject matter and that his participation is very key as per copy of the Plaint attaches and marked annexure "B".
3. The Applicant averred that the 1st Respondent filed a suit against the 2nd Respondent yet she has no propriety interest in the suit subject matter; and the 2nd Respondent herein filed a Written Statement of Defence in the matter as per annexure "C".
4. The 1st Respondent while appearing at Jinja Court instead stated that she had ownership of the land which is not true.
5. He made an application for cancellation of a Certificate of Title of land comprised in FRV-JJA Folio 1 also known as plot 57, Kyabazinga Road. A photocopy of the Application and its annexures are hereto attached and collectively marked as annexure "D".
6. The said land or house was bought using his own money which he paid to the 2nd Respondent and that the 2nd Respondent does not deny the same.
7. The Applicant avers that a decree may be issued may be hard to enforce against any of the parties to **Civil Suit No.007 of 2020** as the suit land belongs to the Applicant.
8. The Applicant further averred that he was reliably informed that the 1st Respondent is currently looking for buyers to sale the suit property.
9. The Applicant avers that he has been advised by his lawyers of M/S Mark Mwesigye & Co. Advocates who advice he verily believes to be true that the Application is necessary in order to meet the ends of Justice.
10. That if an order for attachment before Judgement is not granted, the fruits of final Judgment will be rendered nugatory.

In reply, the 1st Respondent Tumwakire Ronaus filed an affidavit in reply deposed as follows:-

1. That she is the registered proprietor of the suit land having acquired the same through Jinja Municipal Council as per annexure RE.A

2. That after fully paying the purchase price and transfer fees , Jinja Municipal Council confirmed the 1st Respondent as the rightful owner of the suit land entitled to be issued Certificate of Title as per minutes Jinja Municipal Council **attached as RE .B**
3. The Applicant is not the rightful owner of the suit land having denied to have bought the same before Jinja Municipal Council committee meeting and instead asserted that the suit land belongs to the 2nd Respondent , which is not true and as such, that the 1st Respondent rightly sued the 2nd respondent in **Civil Suit No.007 of 2020** as per **Annexure RE.C**
4. That pursuant to orders of **Family Cause No.15 of 2014** filed by the 1st Respondent himself against the Applicant, court ordered or vested the management and collection of rent suit land solely to the 1st Respondent in order to cater for the maintenance in terms of school fees, food, clothing and medical care of the five children and the Applicant was restrained from interfering with the management and collection of rent from the suit land as order/Ruling attached as **RE. D**
5. That pursuant to a consent settlement in Criminal Case No.0067 of 2019, the Applicant surrendered his interest , if any in the suit land and agreed never to return to his place of abode ay the suit land as the marriage had proved unsustainable attached as annexure RE.E
6. That when the 2nd Respondent filed her Written Statement of Defence and counterclaim to the suit filed by the 1st Respondent, she claimed to be the rightful owner of the suit land and hence confirming that she is the rightful person to be sued by the 2nd Respondent in Civil **Suit No.007 of 2022** as per copy of the Written Statement of Defence as per Annexure **RE.F.**
7. That the 1st Respondent has been advised by her advocate M/S Balidawa Ngobi & Co. Advocates , which advise she verily believes to be true that pursuant to the court order **in Family cause No.15 of 2014**, the consent settlement in **Criminal Case No. 0067 of 2019** coupled together with the Applicant's denial before Jinja Municipal Council meeting to have bought good Will interest in the suit land from the 2nd Respondent , this only confirms that the Applicant's interest in the Suit land , if any , had been extinguished , surrendered or relinquished and hence, he is not the rightful owner of the suit land and as such, he is not a necessary party to be sued or to be added to the main suit.

8. That the 1st Respondent is further advised by her advocate M/S Balidawa Ngobi & Co. Advocates, which advise she verily believes to be true that the Applicant's Application is very vague and general since he does not specify the capacity in which he seeks to be added in the main suit.
9. That she is advised by her advocates whose advice she verily believes to be true that the Applicant's instant Application is very vague and general since he does not specify the capacity in which he seeks to be added in the main suit.
10. That she is further advised by her said Advocates, which advise I verily believe to be true that the instant Application is incurably defective and illegal for offending the illiterates Protection Act, as the same was not read over, interpreted and translated to the illiterate Applicant herein by a known and named translator such that the Applicant can append his signature after fully understanding the contents of the said application.
11. That in response to paragraph 2,3,7 of the Applicant's affidavit in support of his application, which are false, the 1st Respondent reiterates that the Applicant having previously denied to have bought the suit land while vehemently asserting that the Agreement he attached as **Annexure "A"** to His application to be a forgery coupled together with court order in the Family Cause No.15 of 2014 and consent Settlement vide Criminal Case No.0067 of 2019, he is estopped by record from alleging otherwise while claiming that he is the owner of the suit land.
12. That the Applicant's instant application for attachment before Judgment is overtaken by events as the suit land was already sold by myself and transfer forms signed in favour of an innocent bonafide purchaser for value as per agreement of sale and transfer forms marked as **RE.G & H.**
13. That the sale of the suit land by the 1st Respondent was prompted by the persistent actions of the Applicant and the 2nd Respondent in connivance to sell off the suit land and as such, that she sold the suit land in order to protect the interests of her children under her care and custody.
14. That indeed after the sale of the suit property, she purchased another property and constructed thereon a house for her children as a replacement for the property she has sold as per agreement of purchase and photographs of a constructed house attached as **REX1. I&J**

15. The 1st Respondent averred that if court is inclined to allow the Application, the applicant should furnish security for costs as his application lacks merit, an abuse of court process, frivolous and vexatious, grounded on falsehoods and lies, it has no legal basis at all and hence it is invalid and illegal at law.
16. The 1st Respondent averred that this instant application should therefore fail as the same is devoid of any merit, frivolous and vexatious, grounded on falsehoods and lies, it is an illegal and invalid application with no legal basis and an abuse of court process and as such, it must be dismissed with costs.
17. That she swears in this Affidavit in reply in opposition to the application.
 - a) **In rejoinder**, that in rejoinder to paragraphs 3,4,5,6,7,12, he averred that the Applicant obtained registration of the suit land irregularly and that is what that the Applicant intends to state his claim to the suit property once added to the suit as attached to the Chamber summons.
 - b) He further averred that in rejoinder 3,4,5,6,7,12, he argued that the Applicant obtained the certificate of confirmation of payment from Jinja Municipal Council irregularly and as such the subsequent process of obtaining the title was fraudulent and that is why he intends to state his claim to the suit property once added to the suit.
 - c) In rejoinder he stated that he didn't in any way stated that the suit property belongs to the 2nd respondent and the 1st respondent shall be put to strict proof of the said contentious .
 - d) In rejoinder to paragraph 7, the Applicant states that the consent was to the effect that he didn't return to the complainant's place of residence which he suit plot but he didn't give away his interests in the land in the said consent.
 - e) In rejoinder to paragraph 10, the Applicant averred that he seeks to be added as co-defendant because he has an interest in the suit property and also intends to set up counter claim in the said suit.
 - f) That Applicant in rejoinder further averred that he is literate in English and indeed he did his S. at Jinja SS in 1995 and as such, the 1st respondent will be put to strict proof
 - g) That furthermore in rejoinder to paragraph 13 and 14, he states that the sale if any is wrongful as he had a bonafide interest in the suit land.
 - h) In rejoinder to paragraph 16, the Applicant stated that the order for security for costs would be unfair to him and would deny him a chance to be heard in the event that he is unable to pay the same.

- i) In rejoinder to paragraph 16-18, that the Applicant's Application is replete with merit as he has interest in the suit property.

REPRESENTATION

At the hearing, the Applicant was represented by learned counsel Muzindula Laston of M/S. Mark Mwesigye & Co. Advocates while the respondent was represented by Counsel Ngobi Balidawa of M/S. of Balidawa Ngobi & Co. Advocates.

BACKGROUND

The background to this Application is that the Plaintiff filed **Civil Suit No.007 of 2020** against the 2nd Respondent seeking for declaratory orders, to the effect that she lawfully acquired registered land title, described as FRV JJA 439 Folio 1, Plot 57, Kyabazinga Road, Walukuba East, in Jinja Municipality and that therefore the same is her property and not the property of the 2nd Respondent. That the 1st Respondent in addition sought a permanent injunction orders restraining the 1st Respondent and any persons deriving or claiming interests in the suit property from trespassing on the same or interfering with the same in any way and from being registered in future as proprietors of the same.

That later, Jinja Municipal Council offered to sale the suit property to the to the 2nd Respondent as it did to other tenants in Walukuba Estate , and accordingly the 2nd Respondent entered into a sale agreement with Jinja Municipal Council. That however, the 2nd Respondent fundamentally breached her sale agreement with Jinja Municipal Council contrary to clause 2(b) of the agreement by failing to complete payment of the agreed purchase price, thus prompting Jinja Municipal Council to cancel the sale agreement and instead relocated it/transferred the suit property to the 1st Respondent as provisions of paragraph 6 of its agreement with the 2nd respondent as property had not yet passed to the 2nd Respondent as per clause 3 of the said agreement. That the 1st Respondent made payments to Jinja Municipal Council for the purchase of the suit property and issued him with a certificate of completion of payment of the suit property, pending processing of the land title in her names, which land Title was processed and issued by the land office.

The 2nd Respondent stated that she was a tenant of Jinja Municipal Council Walukuba Masese estate and was a beneficiary of the disputed property when the Municipal Council sold off the housing units to sitting tenants. That she paid in installments for the units. That in the early 2000s she left her nephew , the Applicant in **Miscellaneous Application NO.148 of 2023**, to occupy the suit premises on the understanding that instead of paying rent directly to her, he

would remit it to Jinja Municipal Council in a bid to clear the purchased price which he did. That after completion of the purchase price, the 2nd Respondent WAS shocked to learn that the 1st Respondent claims ownership of the same property alleging that Mugarura James owned the property. The 2nd Respondent Instituted a counter claim against the Applicant and the 1st Respondent for a declaration that she was the rightful owner of the suit property to wit; house No.2 Block 2, Plot 57, Kyabazinga road, Walukuba Housing Estate, Jinja, cancellation of the Title in the name of the 1st Respondent. A declaration that the Applicant and the 1st The Respondent are trespassers, an order for eviction, general damages and costs

THE LAW

Section 33 of the Judicature Act, Cap 13 empowers this court to grant absolutely or such terms and conditions as it thinks just, all such remedies as any of the parties to a cause or matter is entitled to in respect of any legal or equitable claim properly brought before it, so that as far as possible all matters in controversy are finally determined and all multiplicities of legal proceedings concerning any of those matters is avoided.

Section 98 of the Civil Procedure Act which reads that:-

“Nothing in this Act shall be deemed to limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or prevent abuse of the process of court”.

The section empowers the court to grant the orders in all cases in which it appears to the court to be just and convenient to do so to restrain any person from doing certain acts. The main principle in this section is whether the dictated of justice so demand.

Further, **Order 1 r.1 of the CPR** provides that:-

“All persons may be joined in one suit as plaintiffs in 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 those persons brought separate suits, any common question of law or fact would arise”.

Further, **Order 1 r.10 (2) of the CPR**

“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 presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit, be added”.

The law regarding amendments of pleadings is laid out in **Order 6** of the **Civil Procedure Rules** which provides that:-

“The court may at any stage of the pleadings, allow either party to amend in such manner and on such terms as may be just and such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties”.

Finally, **Order 6 Rule 31 CPR**, provides that;-

“Applications under rules 18, 19 and 22 of this Order shall be by Summons in Chambers”.

RESOLUTION OF THE APPLICATION

I have carefully examined this Application and the supporting Affidavit. The issues to be decided in this matter are as follows;-

1. Whether the Applicant has shown sufficient reasons to allow the granting of his Application?
2. Whether the 1st Respondent should amend plaint in **Civil Suit No.007 of 2020**?

The law regarding amendments of pleadings is laid out in **Order 6 of the Civil Procedure Rules (cited supra)**. The general principal is that the amendment enables parties to alter their pleadings so as to ensure that litigation is conducted on the basis of the real issues in contention between the parties.

Learned Counsel for the Applicant submitted that the applicant is seeking orders to be joined as a party to **Civil Suit No.007 of 2020** and relied on **Order 1 rule 13** of the Civil Procedure Rules provides thus;

“any application to add or strike out or substitute a plaintiff or defendant may be made to the court at any time before trial by motion or summons or at the trial of the suit in a summary manner.”

He argued that the purpose of the joinder of parties was laid out in the case of **Samson Sempasa vs P.K Sengendo H.C.M.A No.577 of 2013** cited with approval in the case of **Walusimbi vs Nakalanzi & 8 Ors M.A No.1784 of**

2019, is to enable court to effectually and completely deal with the matter in controversy and avoid multiplicity of suits.

Therefore the court may at stage of the proceedings order addition of any person whose presence before court may be necessary to enable court to effectually and completely adjudicate upon and settle all questions involved in the suit. That this can be on court's own motion or on application by the intended party. He cited the case of **DAPCB vs Jaffer Brothers Ltd SCCA No.9 of 1998**, lays down the conditions that must be met for one to be joined to the suit and these include;

- a) That the orders sought by the plaintiff in the main suit would directly or legally affect the party seeking to be added.
- b) That the person qualifies to be joined as a co-defendant because the defendants cannot effectively set up a desired defence unless that person is joined or unless the order to be made would bind that person.

And submitted that the issue for determination therefore is;

Issue 1. Whether the applicant ought to be joined as a defendant to Civil Suit No.007 of 2020?

It was submitted by learned Counsel for the Applicant that the Applicant at paragraph 2 of his affidavit of support averred that he bought land and or house from the 2nd respondent and a land sale agreement was executed to that effect and witnessed by the 1st Respondent.

Further, that the 1st Respondent filed **Civil Suit No.007 of 2020** without consulting him and yet she has no proprietary interest in the suit property and that his participation in the said suit is key. That the 1st Respondent in her affidavit in reply stated in paragraph 3 of her affidavit in reply that she is the registered proprietor of the suit land having purchased the same from Jinja Municipal Council.

That in paragraph 7, she stated that pursuant to a consent settlement in **Crim. Case No.0067 of 2019**, the Applicant surrendered his interest, in the suit land; and that it was true that the Applicant in his affidavit in rejoinder at paragraph 6, he acknowledged being party to the consent settlement but that that did not take away his interest in the suit land.

That from the averments above, the Applicant has proven having an interest in the suit land and the 1st respondent does not deny the same but further adds that the same was left to her to collect rent for maintenance of their children hence this does not relinquish the Applicant of his interest.

Further, that the Applicant had further proven that he will be directly or legally deprived of his interest in the suit land if he is not made a party to the suit and the 2nd respondent cannot effectively set up a desired defence without him(the applicant) being party to the suit.

That the depositions of the 1st respondent in respect to purportedly paying the purchase price to the suit property, the purported surrender of the applicant's interest on the suit land; the purported assertion that the applicant denied having bought the suit land; are all allegations that merit consideration in the main suit and credence to the need to add the applicant to the main suit as a defendant; as he claims an interest in the suit property.

They therefore invited this Honourable Court to answer this issue in affirmative and allow the applicant join **Civil Suit No.07 of 2020**; with costs in the cause.

In the first place, I have found that both learned are in agreement as far as the law and authorities under which parties may be joined to an existing suit. Learned counsel for the Applicant also included the conditions set out under **Order 1 r.3 CPR** which were espoused in the case of **O.T vs African Produce (1982) HCB 33 & DAPCB vs Jaffer Bros Ltd, SCCA No.9 /1998**; and submitted that in the latter case, the Supreme Court held that *"for a person to be joined as a party, it must be shown that the orders sought would legally bind that person and to avoid multiplicity of suits, that person be joined or, that the defendant cannot effectually set up a defense unless that person is joined."*

I have also taken into account the authorities relied upon by learned counsel for the 1st Respondent. They relied on the grounds in the 1st Respondent's s Affidavit in reply in paragraphs 3,4,5,6,7& 12 that she is the registered proprietor of the suit property having purchased the same from Jinja Municipal Council after purchasing goodwill in the suit property, which accumulated to 4,474,900/=.

Further, that the Applicant admitted in his Affidavit in rejoinder at paragraph 6b that he was party to the consent settlement in **Criminal Case No.0067 of 2021** meaning he surrendered his interest in the suit property.

That the Applicant failed to prove an interest in the suit property and the 1st Respondent claims fully registered interest which is the reason she has been collecting rent from the same for the maintenance of their Children; and finally submitted that the Applicant has no desired defense to present concerning the main suit property and accordingly lacks interest to be directly or legally be joined as a party to the suit.

I have carefully analyzed this Application and examined the record and found that the Applicant has given sufficient reason connecting him to the suit land that require to be explored through evidence and this can only be done if he is made a party to the main suit. The amendment as proposed will not prejudice the 1st Respondents case as 1st Respondent claims ownership of the same property alleging that Mugarura James owned the property; and the 2nd Respondent instituted a counter claim against the Applicant and the 1st Respondent for a declaration that she was the rightful owner of the suit property to wit; house No.2 Block 2, Plot 57, Kyabazinga road, Walukuba Housing Estate, Jinja, cancellation of the Title in the name of thr 1st Respondent. It is also clear that all parties claim ownership of the suit property, as such, so it will be just and fair to bring all the parties that are laying an interest in the suit property under one suit so that all such remedies as any of the parties to a cause or matter is entitled to in respect of any legal or equitable claim properly brought before it, so that as far as possible all matters in controversy are finally determined and all multiplicities of legal proceedings concerning any of those matters is avoided. **See section 33 of the Judicature Act, Cap 13 and HCCA No.07/2011 Kaahwa Stephen & Another vs Kalema Hannington per** Hon. Lady Justice Monica K. Mugenyi.

Issue 2. Whether the 1st Respondent should ammend plaint in Civil Suit No.7 of 2020?

Learned Counsel for the Applicant in his Application cited **Order 1 r.10 (2) & (13) of the Civil Procedure Rules** and **Order 1 rule 3 of the Civil Procedure Rules** provides that:

“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 question of law or fact would arise”.

The objective of joinder of parties to suit is to avoid multiplicity of suits and of is done at the court’s discretion. Having found as I have in the 1st issue, I therefore agree that since it has been established that the Applicant has an interest in the suit property, it’s only fair that appropriate amendments are allowed to reflect this position.

This issue is therefore answered in the affirmative.

For all the reasons given above, this Application is granted and the Applicant is joined as Defendant to the main suit.

The Applicant is hereby added as a Defendant to **Civil Suit No.007of 2020** and it is ordered that an Amended Complaint is filed within 14 days from the date of this Ruling and served upon all parties to this suit. Thereafter the other parties should file their amended replies within the statutory period and the matter will again follow due process before hearing.

Counsel for the Applicant in his submissions abandoned the third ground in the Chamber Summons, I DO NOT SEE its relevance to this Application and I will not indulge on it.

The Costs of this Application shall abide the outcome of the main suit.

I SO ORDER

JUSTICE DR. WINIFRED N NABISINDE

JUDGE

30/11/2023

This Ruling shall be delivered by the Magistrate Grade 1 attached to the chambers of the Resident Judge of the High Court Jinja who shall also explain the right to seek leave of appeal against this Ruling to the Court of Appeal of Uganda.

JUSTICE DR. WINIFRED N NABISINDE

JUDGE

30/11/2023