

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
AT KAMPALA (LAND DIVISION)
MISCILLENOUS APPLICATION NO. 577 OF 2013
(Arising from Civil Suit No. 234 of 2013)**

SAMSON SEMPASA:.....APPLICANT

VERSUS

P.K. SENGENDO:.....RESPONDENT

BEFORE: HON. MR. JUSTICE BASHAIJA K. ANDREW

R U L I N G:

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: -

- 1. The Applicant Mr. Samson .L. Sempasa be joined as a Defendant in Civil Suit No. 234 of 2013 and all applications arising therefrom.**
- 2. The cost of this application be in the cause.**

The grounds of the application are that;

- (a) The Respondent instituted Civil Suit No. 234 of 2013 against James Ndawula and Gerald Batte seeking various orders including for a Declaration that he is the owner of land comprised in Busiro Block 274 Plots 768,737,736,735,744,747,748,749,752,756,757,767,750,761,762,763, 764and 765 at Mpungu.**
- (b) The Applicant is the current owner of Plot 658(now 735) upon renumbering of the said plots of which the Respondent is trying to take possession. The Applicant purchased the same from the 1st Defendant in the main Civil Suit.**

- (c) The Applicant has issued various notices regarding the said land to the trespassers including the Respondent and his agents but was however surprised to find out that the Respondent has sued the other parties who are no longer in possession of the said land having transferred good title to the other parties including the Applicant.*
- (d) At all material times the Respondent was aware that the Applicant is in possession of the said land but however did not add the Applicant as a party to the suit.*
- (e) Any outcome of H.C.C.S. No. 234 of 2013 will directly affect the Applicant.*
- (f) It would be just and equitable that the Applicant be added as a Defendant in Civil Suit No.234 of 2013 as his proprietary rights in the said land may be affected by the orders sought by the Plaintiff / Respondent.*
- (g) It is only fair and in the interest of justice and administration of justice that the Applicant be added ad party/ Defendant so that all matters can be dealt with once and for all.*

The grounds of the application are amplified in the affidavit of Dr. Samson .L. Sempasa, the Applicant, but mainly, and of specific relevance to the issues in the application he deposes that;

- 2. That I am the land owner in Busiro Block 274 Plot 658 (now plots 735) upon renumbering of the said land having purchased the same from Mr. James Lumama Ndawula, the 1st Defendant in Civil Suit No. 234 of 2013. A copy of the said sales agreement is hereto attached as annexure "A".*
- 3. That the said James Lumama had previously sold part of the land under Plot 491 to Gerald Batte the 2nd Defendant in the main suit and the 2nd*

Defendant was supposed to subdivide the said land and pass on the residue by balance back to the 1st Defendant.

4. *That the residue by balance of Plot 491 was the land the 1st Defendant sold to me under Plot 658.*
5. *That the said title having been released under the names of the 2nd Defendant; the 2nd Defendant handed over the title of the said Land to me and signed Transfer Forms in my favour. A copy of the Certificate of Title and Transfer Forms is hereto attached and marked as annexure “B” and “C” respectively.*
6. *That before the institution of this suit, unknown people were trespassing on my land and I instructed my Lawyers to give them a Notice to vacate my Land. A copy of the said letter is hereto attached as annexure “D”*
7. *That the Respondent was aware that I am in possession of the disputed Land but whoever did not add me as a Party to the Suit as a ploy to abuse court process.*
8. *That to my surprise I discovered the Respondent was ferrying construction on my Land and on making a search in the High Court, I discovered that the Respondent had instituted a Civil Suit against the Defendants claiming for ownership of the said Land and had further obtained an Interim Order from this Court restraining the Defendants and other parties inclusive of me (despite the fact that I am not a Defendant to the suit) from using my Land and yet he was constructing on my Land.*
9. *That I believe that once I am added as a Party to the Suit I can be able to defend my rights regarding Plot 735 of which I rightfully purchased from the 1st Defendant.*

10. *That the main application has not been heard and that this will not affect any Party to the Suit once I am added as a party but however will guide this Court to fully adjudicate on this matter.*
11. *That I therefore believe that it would be just and equitable that I be added as a Defendant in Civil Suit No. 234 of 2013 as my proprietary rights in the said land shall be affected by the orders sought by the Plaintiff/Respondent and I may suffer irreparable Loss and Damages.*
12. *That it is in the interest of justice that this Application is granted.*

The Respondent opposed the application, and the relevant aspects of his affidavit to that effect are contained in the following paragraphs;

8. *That I consciously made a decision not to sue whoever is claiming an interest on the suit land and I have no intention of suing them as the resolution of the questions in dispute in one way or the other resolves the question of their claim.*
9. *That I have been informed by my Advocates, M/S Tibeingana & Co. Advocates, whose information I verily believe to be true, that I cannot be compelled to sue people I do not seek a remedy from as it is incumbent upon the Applicant to file a suit against the person who sold to him what he did not own.*
10. *That I have also discovered that Batte purported to sell the land to third parties after the suit and backdated the agreements with a view of defeating my interest and is now trying to use the hand of court through this application to defeat my suit.*
11. *That I have further been informed by my Advocate M/s. Tibeingana & Co. Advocates, whose information I verily believe to be true, once the land is in the names of a party to the suit, he cannot introduce other entities who*

are not registered as proprietors and neither can they bring up their interest vis-à-vis the legal question that is in court of the legality of the registration of the land.

- 13. That I have been informed by my advocate M/s. Tibeingana & Co. Advocate whose information I verily believe to be true that adding the Applicant as a party shall result into a misjoinder of parties and causes of action.*
- 14. That in the circumstances my cause of action is clearly expounded in the plaint in the main suit and I seek no remedy as against the Applicant herein.*
- 15. That I will be prejudiced if the Applicant's application is granted as I took a well informed and conscious decision not to sue every Tom, Moses, Sam that claims to have an interest in the suit land.*
- 16. That in the peculiar circumstances of this matter it will be wrong and visiting an injustice on me if the applicant is made a party to the suit.*
- 17. That it is thus only fair, just and equitable that the Applicant's application is dismissed.*

Mr. Serwadda Mushia, Counsel for the Applicant, submitted that the Applicant should be added as party and Defendant to the suit because he has an interest in suit land having purchased the same from one James Lumaama Ndawula, the 1st Defendant, and that he is in physical possession of the said plot of land, and that any outcome of the main suit would directly affect his interest. Counsel further submitted that it would be just and equitable that the Applicant is added as a party to the suit as his claim raised triable issues between him and the Respondent plus the two Defendants in the main suit.

Mr. Sempala David, Counsel for the Respondent, opposed the application and submitted mainly basing on the Respondent's depositions in the affidavit in reply. Counsel argued that the main suit has nothing to do with the Applicant in this matter, and that as a Plaintiff the Respondent consciously made a decision not to sue whoever is claiming an interest on the suit land, and that he has no intention of suing them. Further, that the Respondent cannot be compelled to sue parties he does not seek a remedy from. To buttress this proposition, Counsel cited the cases of *Maj. Roland Kakooza Mutale v. Attorney General, H.C.M.A. No. 665 of 2003*; *Gakou & Brothers Enterprises Ltd. v. SGS Uganda Ltd., H.C.M.A. No. 04631 of 2005*; *The Inspectorate of Government v. Blessed Construction Ltd & A'nor. H.C.M.A. No. 73 of 2007*. Counsel prayed that the application be dismissed with costs.

Consideration.

The issue for determination is whether the Applicant can be added as a Defendant in *H.C.C.S No. 234 of 2013* in the circumstances of this case. The joinder of parties to pleadings is governed under *Order 1 r.10 (2) CPR* which provides that;

“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.”[underlined for emphasis].

The procedure for bringing such an application is provided for under *Order 1 r.13 CPR* that;

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

Clearly, under **Order 1 r.10 (2) (supra)** not only can the parties avail themselves of the provisions of the rule but the court itself can on its own motion join any party as plaintiff or defendant if in court’s opinion such joinder would facilitate effectively and completely the determination of the suit. See: **Kololo Curing Co. Ltd. v. West Mengo Co-op Union Ltd. [1981] HCB 60.**

Apart from the above, adding or striking off a party to pleadings, whether on application of the parties or on court’s own motion, is in the discretion of court. Like all discretion, however, it must be exercised judiciously based on sound principles. See: **Yahaya Kariisa v. Attorney General & A’nor, S.C.C.A. No.7 of 1994 [1997] HCB 29.** Importantly, the main purpose of joining parties is to enable the court to deal with matter brought before it and to avoid multiplicity of pleadings.

It is a fundamental consideration that before a person can be joined as party, it must be established that the party has high interest in the case. In addition, it must be clearly demonstrated that the orders sought in the main suit would directly legally affect the party seeking to be added. These considerations have been amplified by the Supreme Court of Uganda in the case of the **Departed Asians Property Custodian Board v. Jaffer Brothers Ltd [1999] I.E.A 55**, that for a party to be joined on ground that his presence is necessary for the effective and complete settlement of all questions involved in the suit, it is necessary to show either that the orders sought would legally affect the interest of that person and that it is desirable to have that person joined to avoid multiplicity of suit, or that the defendant could not effectually set up a desired defence unless that person was joined or an order made that would bind that other person. See also: **Gokaldas**

Laximidas Tanna v. Store Rose Muyinza, H.C.C.S No. 7076 of 1987 [1990 – 1991] KALR 21.

In the instant application, the Applicant has deposed in his affidavit that he has interest as the lawful owner of the suit land comprised in ***Busiro Block 274 Plot 658 (now Plot 735)*** through purchase from James Lumaama Ndawula, who is the 1st Defendant in the main suit. In addition, the Respondent in the main suit seeks for orders, *inter alia*, of cancellation of several certificates of title for having been obtained fraudulently, including ***Plot 735***, which the Applicant lays claims to; having acquired it through purchase from the said James Lumaama Ndawula. Logically, an order affecting the 1st Defendant with regard to the suit land would directly affect the Applicant's interest in the same land. This makes a more compelling case for the Applicant to be joined as a party to enable court effectually and completely determine all the matters in controversy.

It must be emphasized that, among others, the purpose of joinder of parties is to avoid multiplicity of suits. It is a mandate of this court under ***Section 33 of the Judicature Act (Cap.13)*** that as far as possible all matters in controversy between the parties should be completely and finally determined and all multiplicities of legal proceedings concerning any of the matters be avoided. In that regard, it would be appropriate and in the interest of justice that all matters touching and concerning the subject matter of the suit in the instant case be determined finally and completely to avoid litigating over the same matters again; which dictates that the Applicant be joined as a party to the suit.

This court is acutely aware of the position in the cases of ***Maj. Roland Kakooza Mutale v. AG. (supra); Gakou & Brothers Ltd Enterprises Ltd v. SGS Uganda Ltd. (supra); IGG v. Blessed Construction Ltd & Another (supra)*** cited by Mr. Sempala, Counsel for the Respondent. The main thrust in all of them is that a plaintiff is *dominus litis*, and can sue whomever he or she thinks will obtain relief

from; and that a plaintiff cannot be forced to sue somebody whom he or she has not chosen to sue. Further that where a plaintiff sues a wrong party he or she has to shoulder the blame.

In the instant application, however, the adding of the Applicant as defendant by order of court exercising its discretion within the provisions of the law, would not amount to “forcing” the Respondent/Plaintiff to sue someone he does not have a claim against, or suing “a wrong party”. **Order 1 r 10(2) (supra)** clearly stipulates that, “*the name of any person who ought to have been joined, whether as plaintiff or defendant,...*” may be added in appropriate cases.

Indeed the Applicant ought to have been sued since he has been in physical possession of the suit land and directly claims interest therein, while the Respondent is seeking to take over the same land. Suing only the parties from whom the Applicant claims to have bought, but who no longer have any vested interest in the suit land, and omitting to sue the Applicant would not enable this court to effectually and completely adjudicate upon and settle all questions involved in the suit. If anything, it would only serve to proliferate multiplicity of proceedings; which this court is enjoined by law to curtail.

Accordingly, I find this a proper case in which the Applicant should be; and he is added as a party to the case as a Defendant. The Applicant is directed to effect the necessary amendments to the pleadings and to serve the other parties within 15 days from the date hereof.

Further, since **Miscellaneous Application No. 0579 of 2013** was handled concurrently with the instant application, and Mr. Ambrose Tebyasa Counsel for the Applicant therein made submissions in support of the application, it is directed that **Mpiima Moses**, the Applicant therein be; and is hereby added as party as a Defendant in the main suit, with the same orders as in the earlier application. Both

applications are disposed of in the same manner, and costs of the applications will be in the cause.

BASHAIJA .K. ANDREW
JUDGE

27/08/13