

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**CIVIL DIVISION**

**MISC APPLICATION NO. 587 OF 2012**

*(Arising From Civil suit No. 315 of 2012)*

**ABDUL KARIM KIWANYI ::::::::::::::::::::::::::::::::::: APPLICANT**

**VERSUS**

**1. HAKEEM LUKENGE**

**2. UGANDA NATIONAL ROADS AUTHORITY ::::::::::: RESPONDENT**

**3. COWI UGANDA LTD**

**BEFORE: HON. JUSTICE ELDAD MWANGUSYA**

**RULING**

This is an application brought under Section 98 of the Civil Procedure Act (Cap 71) Laws of Uganda and order 1 Rule 10 of the Civil Procedure Rules seeking for orders of this Court that the applicant Abdul Karim Kiwanyi be joined as a Co-Defendant to HCCS No. 315 of 2012; **Hakeem Lukenge Vs Uganda National Road Authority and COWI Uganda Ltd** and that costs of the application be provided for.

The application is by a Notice of Motion and is supported by the affidavit of the applicant containing the grounds of the application stated in the Motion as follows:-

1. The Applicant is resident at Kabaare Cell III, Kabaare Parish Masha Sub-county, Isingiro District where the Applicant has lived with his wife and children for 30 years and built his matrimonial home.
2. Part of the Applicant's crops and land were valued by the 2<sup>nd</sup> Respondent and the 2<sup>nd</sup> Respondent's agent COWI Uganda Ltd, the 3<sup>rd</sup> Respondent.

3. The 1<sup>st</sup> Respondent has filed HCCS No. 315 of 2012 in which he is seeking to be paid all compensation monies due to the estate of the late Haji Jaffer Sentamu of which the applicant is one of the beneficiaries.
4. That the applicant is entitled to receive the monies for compensation for the land taken by the 2<sup>nd</sup> Respondent and the crops destroyed in the process.
5. That the Letters of Administration held by the 1<sup>st</sup> Respondent are being contested in HCCS No. 126 of 2012 now pending before the High Court, Family Division.
6. It is in the best interest of justice that the Applicant be joined as a Co-Defendant to HCCS NO. 315 of 2012 so all issues in the suit can be determined.

Of the three Respondents named in the application only the 1<sup>st</sup> filed an affidavit in reply in which he opposed the application. The 2<sup>nd</sup> Respondent was represented at the trial by Mr. Jet Tumwebaze who introduces himself as counsel for them. Mr. Jet Tumwebaze submitted that his instructions were not to oppose the application. The 3<sup>rd</sup> Respondent neither filed an affidavit in reply nor attended the trial.

The affidavit of the applicant in support of the application can be put in two broad categories. The first category are averments in which he lays a claim that he is entitled to the compensation of the shs 55,272,411= because the property in question does not belong to the estate of the late Haji Jaffer Sentamu but is his property. The second category relates to averments as to the suit in the Family Division of this court where the 1<sup>st</sup> Respondent's grant of Letters of Administration for the estate of their father is being challenged on grounds that it was obtained fraudulently and that the estate is being mismanaged.

I also wish to observe that paragraph 8 of the applicant's affidavit that the 1<sup>st</sup> Respondent is a habitual criminal and impostor at both national and international level is not relevant to this application even if there was proof that he is one. The substance of the application is application of Order 1 Rule 10 Sub-rule 2 and counsel representing applicants like in this case are urged to avoid bringing matters that are irrelevant even if the applicant insisted on the inclusion of such matters.

In his submissions, Mr. Obiro Ekirapa ably articulated on the application of Order 1 Rule 10 Sub-rule 2 which is cited hereunder.

***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 of the 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.**(emphasis added).

He cited the case of **N.A SHAH & CO LTD Vs MULOWOOZA & BROTHERS LTD CIVL APPEAL NO. 57 OF 2009** (unreported) where the Court of Appeal after discussing the application of the rule came to the following conclusion:-

***“As already pointed out above the law allows an amendment at anytime even after the hearing has commenced for just to disposal a suit and crucially to prevent multiplicity of suit. See Gasu Transport Services (Bus) Ltd Vs Martin Adala Abeno, SCCA No. 4 of 1994. The court retains a wide discretion in allowing amendments. I believe this is one of the cases the judge should have exercised such discretion. The web of the facts of this case does warrant the joinder of the Attorney General, I reiterate.”***

I agree but quickly add that the use of the word discretion means that there may be circumstances under which court may find that a joinder of a party is not warranted. The question that faces this court is as to whether or not in the circumstances of this case it is necessary to add the three respondents of whom the 1<sup>st</sup> respondent strongly objects.

In his submissions Mr. Okello Oryem counsel for the 1<sup>st</sup> respondent contended that the applicant had no legal interest in the head suit and the first respondent who is the plaintiff in the main suit has no cause of action against him and cannot be forced to sue him. He cited the case of **MAJOR ROLAND KAKOOZA MUTALE Vs ATTORNEY GENERAL MISC APPLICATION NO. 665 OF 2003** where the Inspector General of Government applied to be joined as a defendant in a suit against the Attorney General and His Lordship Justice Yorokamu Bamwine (as he then was) declined to after setting down the principles under which an application of this nature would be allowed. I quote:-

***“Generally speaking, under O. 1 r. 10(2) of the Civil Procedure Rules (CPR) gives court wide powers to strike out or add parties to suits. However such addition cannot be for the sake of it. There must be a compelling reason to do so. The principles under which such application can be allowed are fairly well known.***

- 1. The plaintiff is at liberty to sue anybody he thinks he has a claim against and cannot be forced to sue somebody. Where he sues a wrong party, he has to shoulder the blame. See. Bahemuka Vs Anywar & Another [1987] HCB 71.***
- 2. Court has no jurisdiction under O. 1 r. 10(2) to order the addition of parties as defendants where the matter is not liable to be defeated by non-joinder; when they were not persons who ought to have been sued in the first place; and where their presence as***

*a party is not necessary to enable court effectively to adjudicated on all the questions involved.*

3. *A defendant will not generally be added against the plaintiff's wish. See: Coffee Works (Mugambi) Ltd Vs Kayemba HCCS No. 505 of 1963 MB No 56/1964.....*

Before applying the above principles I wish to set down the claim of the plaintiff against the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents in order to appreciate as whether or not the addition of the applicant is necessary and would in any way enable court effectually and completely to adjudicate upon and settle all questions involved in the suit." The claim is set out in para 4 of the plaint as follows:-

*"4. The plaintiff's claim against the Defendants is for the following declaration and orders namely; i) that the defendants have jointly and severally trespassed on to late Jaffer Sentamu's land; ii) that the actions of the Defendants amounts to compulsory acquisition of the late Jaffer Sentamu's land without compensation; iii) that the plaintiff as the legal representatives of the estate of the late Haji Jaffer Sentamu is the rightful person to collect the compensation due to the said deceased's estate from the Defendant's; an order that the Defendants make prompt payment of fair and taking possession of any part of the estate of the late Jaffer Sentamu for the construction of a public road; general damages, interest and costs of the suit."*

In my view the actions for trespass, and compulsory acquisition of land are defensible by the 2<sup>nd</sup> and 3<sup>rd</sup> respondents and it is not necessary to involve the applicant because he is neither a trespasser on the land nor has he compulsory acquired it as alleged in the plaint. The plaintiff would have no claim against him and he rightly chose not to sue him. As to the compensation and to whom it should be paid the dispute is between the plaintiff and the 1<sup>st</sup> Respondent and has nothing to do with the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents. It is not necessary to resolve this dispute in this suit but rather in the suit filed in the Family Division where according to the plaint which was attached to this application the extent the estate of the late Jaffer Sentamu including its administration is supposed to be determined. That would not create a multiplicity of suits because each of the two suits now already filed in court would resolve separate issues. This suit would resolve the issue if the compensation and the one of the late Jaffer Sentamu's estate would resolve the issue as to who between the estate of the late Sentamu and the applicant in this application is entitled to the compensation.

In the circumstances I find no merit in this application which is dismissed with costs to the 1<sup>st</sup> Respondent, the only one that contested it.

**Eldad Mwangusya**

**J U D G E**

**15.03.2013**

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