

**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT JINJA**

**MISC. APPLICATION NO. 027 OF 2015**  
(ARISING FROM CIVIL SUIT NO. 051 OF 2010)

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**THE REGISTERED TRUSTEES OF  
THE NILE EDUCATION  
SOCIETY**

10 **JINJA ::**  
**APPLICANT**

**VERSUS**

15 **THE MEDICAL SUPERINTENDENT  
JINJA  
HOSPITAL ::R**  
**ESPONDENT**

20 **BEFORE: THE HON. JUSTICE GODFREY NAMUNDI**

**RULING**

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This Application is brought under Section 98 Civil Procedure Act, Section 33 of the Judicature Act and Order 1 rule 13 of the Civil Procedure Rules.

30 It seeks Orders that:

(a) Uganda Land Commission and the Attorney General and the Commissioner for Land Registration be added as parties to the suit.

(b) Costs of the application.

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The grounds upon which the Application is based are:

(1) There is a Civil suit No. 51/2010 against the Medical Superintendent of the Respondent.

10 (2) The said suit seeks Declaratory Orders as to ownership of the Applicant and a permanent Injunction among others.

15 (3) That while the suit was on going, the officials of the Uganda Land Commission and the Commissioner for Land Registration were in the process of illegally subdividing and disposing of the suit land to 3<sup>rd</sup> parties.

20 (4) That a total of 7 Plots have been sub-divided and subsequently sold by the Respondents.

(5) It is just and equitable to grant the order.

The Application is supported by the affidavit of DHARMESH  
25 PATEL who claims to be the registered proprietor of the suit

property. This is by virtue of repossession and renewal of a Lease over the suit land.

5 The Respondent has refused to give vacant possession of the suit property to the Applicant prompting him to file the head suit.

10 The intended additional Defendants have gone ahead to sell parts of the suit land (7 Plots) thereof to members of the public and hence the need to add them as parties to the suit.

15 The Respondent through Kosia Kasibayo of the Attorney General's Chambers filed an affidavit in reply. They deny that the Respondent has ever repossessed the suit property as it does not appear in the Land Registry records.

Further that the Applicant has never had physical possession of the suit property right from 1972.

20 The affidavit also states that the Respondent is a non-existent person in law and hence not capable of being sued. The amendment or the Application to add the intended Defendants would therefore be futile.

25 Counsel for the Applicant has submitted that in pursuance of attempts to gain vacant possession to the suit land they

went ahead and warned the public through a Caveat Emptor in the New Vision Newspaper. The intended Defendants still went ahead and sub-divided and sold parts of the suit land.

- 5 The Respondents have submitted that since the Respondent is a non-existent person, the proceedings are defective. That a Plaint against non-existent person is incurably defective and no amount of amendment can correct it. That the Applicant should instead file a fresh suit.

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Addition of parties is governed by Order 1 rule 13 of the Civil Procedure Rules.

15 This Application should ordinarily have also cited Order 6 rule 19 of the Civil Procedure Rules since the moment parties are added, the consequence is that the pleadings must be amended.

20 The governing principle is that amendments should be allowed if no injustice is caused to the other party so that all issues in the dispute can be addressed. This is in line with Article 126 (2) (e) of the Constitution regarding administration of substantive justice. Ref: **Kalumba & another Vrs. Kakira Sugar Works Ltd. & another; Misc. Application No. 461/2014, (Arising out of Civil Suit No. 33/2013).**

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It is in order for an Application to add or strike out a party to also amend the pleadings. It would therefore not be necessary to file 2 Applications, one for adding a party and  
5 the other for amending Pleadings because one automatically leads to or is a consequence of the other.

The Applicant's Counsel Mr. Olweny tried to desegregate the two positions when Counsel for the Respondents tried to  
10 argue that the Pleadings are defective and hence cannot be cured by amendment.

Unfortunately, the Respondents concentrated on the argument that the Plaintiff is defective and hence the intended  
15 adding of parties/amendment is untenable. Their arguments are based on the status of the Respondent who they claim is non-existent. Reference was made to the cases of **John Ntambi Vrs. A.G. & another Civil Suit No. 275/87, Abdurahman Elamin Vrs. Dhab Group & 2 others; Civil suit No. 432/2012 and Joseph Mpamya Vrs. Attorney General; HCCS No. 2/95.** In all the three  
20 authorities the overriding theme is that a Plaintiff in the names of the wrong Defendant cannot be amended but can only be rejected.

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In the instant case, the Applicant/Plaintiff has a claim over land currently being occupied by the Respondent. If it is true that the person(s) he has brought to Court are the wrong party, then trying to add the intended additional Defendants  
5 would not cure the defect.

A perusal of the Application and the supporting affidavit also reveal that the Applicant's complaints against Uganda Land Commission and the Commission for Land Registration are in  
10 respect of sub-dividing the suit land and selling it to other parties.

It is not clear whether the activities complained of are part and parcel of the activities of the first Respondent.  
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It would appear that the Application if allowed would have the effect of introducing a completely different dimension to the proceedings. This would in effect whittle away what I have gleaned as the defence of the Respondents that the  
20 Application and the Plaint disclose no cause of action having been filed against a wrong party.

The principles governing amendment of pleadings have been laid out in **GASO Transporters Services Ltd. Vrs. Martin Adala Obene - SCCA 4/94.**  
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1. The Court may allow amendment as may be necessary for determining the real question of controversy between the parties to avoid a multiplicity of proceedings.

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2. The Application should not be such that to allow amendment would prejudice and cause injustice to the opposite party.

10 3. The Application should be in good faith.

In the instant case, it is my view that allowing the Application would prejudice the defendants by introducing new causes and would interfere with the intended defence that the suit discloses no cause of action.

In conclusion, I find that the intended amendments/Application to add parties is not sustainable. The Application is disallowed. The Applicant should sit down with their Lawyers and determine the parties, cause of action etc. and file a proper suit against the correct parties. The Application is dismissed with costs.

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**Godfrey Namundi**

**JUDGE**

**08/04/2015**