

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

**MISC. APPLICATION NO. 493 OF 2015
[ARISING FROM CIVIL SUIT NO. 189 OF 2012]**

ARROW AQUACULTURE AFRICA LTD.....APPLICANT

VERSUS

SIMUSANYUKIRA SARAH & 23 ORS.RESPONDENTS

RULING

BEFORE: THE HON.LADY JUSTICE EVA K. LUSWATA

The applicants proceeded ex parte on these summons seeking an order of the court, for leave to issue a 3rd party notice against the Uganda Investment Authority [UIA] and the administrator of the estate of the late Dr. Yakobo Moyini. The Chamber Summons is supported by the affidavit of Keith Neville Director of the applicant company. The applicant is the defendant in Civil Suit No. 189/2012 which I will refer to as the main suit.

The Chamber Summons did not quote the law relied on, but a 3rd party notice will issue under O.1 r.14 [1] and [2] CPR and if I may read it,

“Where a defendant claims to be entitled to contribution or indemnity over against any person not a party to the suit he/she by leave issue a notice [herein after court a “3rd party notice”] to that effect. It shall be by summons in chambers ex parte.”

So to break down those provisions the applicant need to satisfy court that they have claim of contribution for indemnity against proposed the 3rd party.

In the main suit, the plaintiffs are claiming to be babanja owners on Block 353 plot 35 at Goli village, Kigombe zone in Buikwe District. They further claim that the defendant who is the applicant now, fraudulently obtained a lease from the Uganda Investment Authority without the latter compensating for their interests or giving them inadequate compensation. The defendant then destroyed the plaintiffs' property and food crops. They claim *inter alia* compensation in special damages, general damages vacant possession and mesue profits.

The applicant filed a written statement of defence in which she claims that both proposed third parties were their predecessors in title and that the 3rd parties were responsible for relocating and compensating the plaintiffs. And in fact, compensation took place before the defendant/applicant obtained interest in the land on 28/7/2009.

Those facts are recounted in Neville's affidavit and he added that it was a term of the lease between the applicant and the UIA that the applicant would obtain title over the land, without competing legal or equitable interests. He then goes on to say that, it is necessary to issue the notice against the two proposed 3rd parties because it is them who dealt with the respondents, they are better placed to support the defence in the main suit by explaining issues regarding compensation.

I have already stated, what the applicant needs to satisfy court, but also I will refer to the case of **M/S Panyahululu Co. Ltd vs. M/S New Oceans Transporters Co. Ltd & ors. CS 523/2006** by Justice Bamwine where he stated as follows: *"I understand the law to be that in order that the 3rd party be lawfully joined, the subject matter between the 3rd party and the defendant must be the same as the subject matter between the plaintiff and the defendant and the original cause of action must be the same. In other words, the defendant should have a direct right to indemnity as such which right should have generally if not always, arise from a contract which is express or implied."* This case was provided by counsel for the applicant.

Therefore, the cause of action in the main suit should be the same as the cause of action that may exist between the defendant and the 3rd party as well as the subject matter. I notice that in para. 12 of his affidavit, Neville did not seek contribution or indemnity as such; he simply said that the

proposed 3rd parties are best suited to explain any issues regarding compensation of the respondents/plaintiffs.

However, I find that the 3rd party certainly have a direct nexus to the land in issue especially in regard of compensation and relocation of the respondents. In fact, in para. 4 [e] of the plaint, the plaintiffs/respondents state that it is the Uganda Investment Authority that mislead the applicant/defendant to think, which thought was unfounded and uninvestigated, that they had compensated the plaintiffs whereas not. And the applicant did state in this defence that they were not responsible or involved in compensation, allocation and relocation of the plaintiffs.

In my view, the Uganda Investment Authority was the instrumental party with regard to compensation or the alleged compensation of these plaintiffs. They therefore should have been added as a defendant to this suit. In fact, the deed of receipts attached to the defence of the applicant were all made between some of the plaintiffs and the Uganda Investment Authority. The latter was better placed to explain to this court the relationship between them and the plaintiffs and whether the plaintiffs were compensated before this land was transferred to the applicant.

Although the applicant can seek indemnification or contribution from the Uganda Investment Authority, I would believe UIA is better placed as defendants because there would be cause of action by the plaintiffs against the Uganda Investment Authority on the issue of compensation, and a cause of action between the plaintiffs and the current applicant in regard to loss of property, destroying of crops and probably compensation. That said, how can Uganda Investment Authority be introduced in this proceedings?

According O.1 r.10 [2] CPR, the court may at its own volition allow a party to be joined where in the view of the court the presence of that party in the proceedings is necessary in order for the court to effectively and completely adjudicate upon and settle all questions involved in the suit. In my view the Uganda Investment Authority is such party. It is necessary for them to come and tell court the history of compensation or none of it to the plaintiffs. I would thereby order that instead of a 3rd party notice to issue against Uganda Investment Authority, they instead be joined

as defendants to this suit. It will of course necessitate amendment of the plaint and I would allow time for that.

With respect to the administrator of the estate of the late Yakobo Moyini, I note that there is no nexus between them and the current applicants. They are only predecessors in title. If there be any legal nexus, it would be between the late Dr. Yakobo Moyini [and now the administrators of his estate] and the Uganda Investment Authority. Again it may be on the issue of compensation and relocation of the plaintiffs. Therefore I decline to grant an order for a 3rd party notice against the administrator of the estate of late Yakobo Moyini. Once the UIA joins the suit, should they feel inclined to issue a 3rd party notice against Dr. Yakobo Moyini's estate, they will be allowed to do so.

That said, I would allow the plaintiffs to amend their plaint to add the UIA as defendants and I would give them 30 days from today to do so. I have given them a long period because they were not party to these proceedings and they will need sufficient time to prepare themselves. The UIA will be served and they will be allowed to file a defence to the suit. Should the current applicant feel they need to amend their written statement of defence they would be allowed to do so. The defendants will take their steps within the time allowed by the statute after they have been served with the amended plaint.

Therefore, I mandate counsel for applicant who is present in court today to extract a very concise order of what I have ordered and serve it on the plaintiffs so that there is no doubt about how this case is going to proceed from here.

This matter proceeded ex parte. I therefore order that the costs of the application be met by the applicant.

EVA K. LUSWATA
JUDGE
20/10/2016