

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

**MISC. APPLICATION NO. 0437 OF 2016
[ARISING OUT OF CIVIL SUIT NO. 0148 OF 2016]**

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- 1. MURISHO SHAFI
- 2. KIRONDE GODFREY
- 3. SOWALE ABEDI
- 10 4. SAM S. MALE
- 5. NNUME EDWARD.....APPLICANTS

VERSUS

- 15 1. KALISA KALANGWA MOSES
- 2. THE ATTORNEY GENERAL
[Representing the IGG].....RESPONDENTS

RULING

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BEFORE: THE HON. LADY JUSTICE EVA K. LUSWATA

The 5 applicants sought by motion an order that they be joined as a plaintiffs in Civil suit No. 148/2016 and for costs to be provided for. They are proceeding under Order 1 rules 1 and 13 CPR, and following my order of 12/10/16 the matter proceeded exparte. The application is supported by 4 affidavits and the applicants were represented by counsel Muzuusa who made brief submissions in court and also quoted authority.

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A party maybe allowed to be joined to existing proceedings, the enabling law being Order 1 r.1, 10[2] & 13 CPR. And specifically the provisions of rule 10[2] are that;

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“The court may at any stage of the proceedings either upon or without the application of the either party and on such terms as it 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 have been joined whether as plaintiff or defendant or whose presence before the court may be necessary in order to enable the court efficiently and completely adjudicate upon and settle all questions involved in the suit be added.”

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To summarise that provision, the applicants need to satisfy me that;

- [1] They are persons who ought to have been joined to the suit.
- [2] Their presence is necessary to enable this court to effectively and completely adjudicate upon and settle all questions in dispute in order to avoid duplicity of suits and
- [3] The application may be made by any party to the suit or not in the suit or the court on its
5 collusion.

Counsel provided the case of **Mukuye Steven and 73 Ors. vs. Madhvani Group Ltd - Misc. Application No. 821/2013**, which exhaustively considered that rule. Justice Bashaija laid down some rules or principles that may be useful to me in this matter in that;

- 10 [1] The party making the application must show high interest in the case.
- [2] The orders ought in the main suit would directly or legally affect the party seeking to be added and,
- [3] The defendants cannot effectively set up a desired defence unless that person is joined or order made that would bind that person in that case. The Judge considered the decision in
15 **DAPCB vs. Jaffer Brothers Ltd [1999]1 EA 53.**

Now turning to the facts of this case, the applicants here are members of the Jinja Central Land Committee. They have indicated in their application that they sit on that committee only in an advisory capacity on matters to deal with land including ascertaining rights in land and
20 allocations and that the outcome of the main suit, Civil Suit No. 148/2016, is likely to affect or put into question their work ethics.

I have confirmed that Land Committees are created under Section 64 [1] of the Land Act. They are appointed by a District Council on advise of a Subcounty or Division Council and they are
25 not a body corporate meaning that they cannot sue or be sued. So if they may be joined they will be joined in their individual capacity.

Indeed, as they state, according to Section 64[7] of the Land Act, their duty is to assist the Board in an advisory capacity on matters relating to land, for example, ascertaining rights in land.

Turning to the main suit, the subject matter, is Plot 24 Spire Road and in it, Kalisa Moses Kalangwa who is the plaintiff, is contesting the decision of the IGG to investigate him in respect of Plot 24 Spire Road, his argument being that the IGG has no power or jurisdiction to do so and if she continues doing so she will be in contempt. He also mentioned that the same land is in fact
5 the subject of yet another suit No. 14/2016 which is attached to the plaint and that suit is proceeding between parties known as TSNP [U] Ltd. as the plaintiff and the Registrar of Titles and one Nantambala Joyce as the defendants. All those parties are not party to the suit here or the application.

10 If I were to give a short summary of that suit, the plaintiff claims to be the owner of plot 24 Spire Road which was repossessed by one MS Jinja Garage Ltd. who were their predecessors in title. That they are in occupation, and that in fact the property was at one time gutted by fire. And that the lease had expired but the plaintiff in that case, that is MS TSNP [U] Ltd, had applied for extension of the lease which was granted but as they were persuing a grant of a special title
15 because it had been destroyed in the fire, they learned that the DAPCB had in fact allocated the land to Nantambala Joyce, so the dispute is that they are disputing that very allocation.

Now, the parties here also intimate that the Registrar of this court issued an Interim Order to stop the investigation of the IGG and that Interim Order is in place until 5th December, 2016 when the
20 main application of an injunction is to be heard. Now I do not understand how the applicants tie in to all this or both applications and how the judgment and order in the main suit before me will affect them. They did not even explain whether Mr. Kalangwa is a member of the Land Committee but even if he were, I have already found that the applicants as mere members of the Land Committee and only have a duty of advisors to the District Land Board which makes the
25 allocation of the land in dispute. Additionally, they are not a body corporate who can be sued so if any decision was wrongly made, it would be a wrong decision of the District Land Board. They are only agents of the Land Board and it is the District Land Board which would be sued. I cannot see how they can be affected by the judgment and decree in the main suit before me because in fact, the investigation by the IGG is in respect of only Kalisa Moses Kalangwa. So
30 their inclusion in that matter is not in any way going to improve the Court's ability to effectively and completely adjudicate the dispute between Kalangwa and Attorney General or infact, the

other suit that was raised. In fact their cause of action against the Attorney General representing the IGG is not clear. So I find that they will not be prejudiced if they are not included in this application, they can in fact file another suit without there being duplicity.

5 For the above reasons, I opine that the applicants do not qualify as persons who should be added to Civil Suit No. 14/2016 and thereby the application is denied. And since these proceedings were *exparte*, the applicants will meet the costs of the application.

I so order.

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EVA K. LUSWATA
JUDGE

15 **18/10/2016**