

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

**MISCILLENIOUS APPLICATION NO. 039 OF 2014**

*(Arising Out of Masindi High Court Civil Suit No. 21 of 2014)*

1. TIBAGWA JOSHUA
2. TIBAGWA SOLOMON
3. KUSIIMA ROBINAH:.....APPLICANTS
4. KUNIHIRA HARRIET
5. KAAHWA LYDIA

**VERSUS**

1. YAYA UCAME
2. OMIKA JOHN:.....RESPONDENTS
3. ABOTE ANWARIT & 50 OTHERS

**R U L I N G BY HON. JUSTICE GADENYA PAUL WOLIMBWA**

This application is brought under Order 1 r.10(2) and Order 52 r.1 and 3 Civil Procedure Rules(CPR), for orders that: -

1. The Applicants be joined as a Defendant in Civil Suit No. 21 of 2014.
2. Cost of this application be provided for.

The application was supported by the affidavit of Kusiima Robinah on the grounds that:

- (a) The Respondent instituted Civil Suit No. 21 of 2014 against Bansigaraho Robert and Hoima District Lands Board claiming Land comprised in FRV 1051 Folio 16 Buhaguzi Block 7 Plot 44.
- (b) That the Applicants are the lawful owners of the suit land and in possession of the same.
- (c) That the Applicants presence before the court is necessary in order to enable the court effectually and completely adjudicate upon and settle all questions involved in the suit.
- (d) That it is just and equitable that the Applicants be added as parties to civil suit No. 21 of 2014.

The Applicants were represented by Mr. Birungi Wyclef of M/s Birungi & Co. Advocates while Mr. Ian Musinguzi of M/s Musinguzi & Co. Advocates represented the respondents.

Counsel for the Applicant, submitted that the suit land was originally owned and occupied by the Applicant and the suit land was wrongly registered in the names of the Bansigaraho Robert which led to Civil Suit No. 32 of 2012 in this Honorable Court which was decreed by consent of parties that the suit land legally belonged to the Applicants and that the registration of Mr. Bansigaraho Robert should be cancelled and be substituted with the names of the 1<sup>st</sup> and 3<sup>rd</sup> Applicants.

That before the 1<sup>st</sup> and 3<sup>rd</sup> registration was effected as owners of the suit land, the respondents instituted Civil Suit No. 21 of 2014 against Bansigaraho Robert who was still the registered owner of the suit land claiming that their customary land was included in the certificate of title. Therefore the Applicants who were decreed as owners of the suit land hereby seek to be joined as parties to the said suit.

Counsel referred to Order 1 rule 10(2) of the Civil Procedure Rules (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 a plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court to effectively and completely adjudicate upon and settle all questions involved in the suit, be added”.**

Counsel also relied on the case of Departed Asians Property Custodians Board Vs. Jaffer Brothers Ltd, (1999) 1 EA 55 Mulenga JSC held rule 10(2) (supra) provides for joinder of parties to a suit on courts own motion or on application of a party at any stage of the proceedings. The parties joined under this rule are those who ought to have been added in the first place but who were not. Because their presence is necessary in order to enable the court effectively and completely adjudicate upon and settle all questions involved in the suit. Court may either upon or without the application of the parties order their mandatory joinder as parties.

Counsel further relied on the case of Kololo Curring Co. Ltd versus West Mengo Co. of Union Ltd (1981) HCB 60 It was held that;

**"The fundament consideration is to enable the court effectively and completely deal with matters brought before it and to avoid a multiplicity of suits/proceedings".**

Counsel also relied on the case of Mukuye Stevens & 73 others Versus Madhivani Group Ltd Misc. Application No. 821 of 2013 Bashaija K Andrew held that;

**"Before a person can be joined as a party, it must be established that the party has high interest in the case. It must be clearly demonstrated that the orders sought in the main suit would directly legally affect the party seeking to be added.**

In the case of Departed Asians Property Custodians Board Vs. Jaffer Brothers Ltd, (supra) the Supreme Court held;

**"For a party to be joined on the 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 order sought would legally affect the interest of that person and that it is desirable to have that person joined to avoid a multiplicity of suits 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".**

Counsel further submitted that the affidavit in support of the application clearly proves that the applicants are concerned parties in Civil Suit No. 21 of 2014, that the orders sought in the suit would directly affect them and their presence is necessary in order to enable court to effectively and completely adjudicate upon and settle all question involved in the suit to avoid a multiplicity of suit.

Referring to paragraph 2 of the affidavit of Kusiima Robinah counsel submitted that the applicants are the lawful owners of the suit land. Under paragraph 4 it's averred that Bansignaraho Robert the 1<sup>st</sup> defendant in Civil Suit No. 21 of 2014 surrendered and relinquished all his claims in the suit land per the consent decree in Civil Suit No. 032 of 2012. That Bansigaraho is no longer the legal owner of the suit land although it is still registered in his name. Counsel submitted that the respondents who claims to be customary owners of the suit land filed civil suit No. 21 of 2014



against Bansigaraho Robert and Hoima District Land Board in ignorance of the fact that the land is now lawfully vested in the Applicants. That the outcome of Civil Suit No. 21 of 2014 would directly affect the applicants since they are the lawful owners of the suit land and the said suit seeks for declaration on ownership of the said land and if the applicants are not a party to suit, they shall not have an opportunity to be heard in respect of their ownership claim. Therefore the applicants ought to have been included as parties to civil suit No. 21 of 2014 since Bansigaraho is not the lawful owner but the applicants who are the legal owner of the suit land.

Counsel further submitted that in order for court to effectively and completely adjudicate upon and settle all questions involved in the suit and to avoid multiplicity of suits, that the interest of the applicants over the suit land must also be heard and determined. That there cannot be a full determination of ownership of the suit land only between the respondents and Bansigaraho Robert, any successful party in the said suit would have to also deal with the interest/ claim of the Applicants over the suit land and this may necessitate another suit. That it prudent and legally justified for this honourable court to join the applicants as parties to civil suit No. 21 of 2014 since the applicants would be directly affected by the outcome of the said suit and that their joinder would enable court to effectively and completely adjudicate upon and settle all questions involved in the suit and to avoid multiplicity of suits.

Counsel concluded and prayed to this honourable court to be pleased and allow this application and the applicant be joined as parties to civil suit No. 21 of 2014.

Counsel for the Respondent, opposed the application and made submissions under the following issues;

1. Whether the Applicants be joined as defendants in civil suit No. 21 of 2014.
2. Whether the Respondents are entitled to costs.

In resolving the first issue counsel for the respondent submitted that the respondents strongly oppose joining the applicants as defendants in civil suit No. 21 of 2014 that accordingly applicants should not be joined as defendants in Civil Suit No. 21 of 2014. That the applicants relied on order 1 rule 10 (2).

**"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. "**

Counsel submitted that in civil suit No. 21 of 2014 the respondents sued Bansigaraho Robert and Hoima District Land Board. That Bansigaraho Robert obtained a certificate of title without the knowledge of that respondents and Hoima District Land Board was sued for granting Bansigaraho a certificate of title without their knowledge. That there was fraudulent transactions in the suit land between Basingaraho and Hoima District Land Board. That joining the applicants as defendants in civil suit No. 21 of 2014 shall not serve any good since the respondents have no cause of action against them and that they have not shown their presence in court is necessary to enable court effectively and completely adjudicate and settle all questions involved in the suit.

Referring to the in affidavit of the 1<sup>st</sup> applicant, Counsel submitted that Kusiima Robinah under paragraph 4 deponed that the suit property in civil suit No. 21 of 2014 is still registered in the name of Basingaraho Robert who is the proper Defendant already in court. That the root interest is that being in possession of the suit is consequential to the main suit, the consent judgement is being challenged in Misc. Application No. 0172 of 2015 therefore the respondents have no claim against the applicants and are not interested in suing the applicants.

Counsel further submitted that the applicants are not the proper party to be joined and that their presence before court is not necessary for the complete and effectual adjudication of the case, the applicants are already defendants in another case vide Civil suit No. 19 of 2014 where the applicant herein are the registered proprietors of the suit land in question and have evicted over 119 plaintiffs without a court order. Referring to paragraph 11 of the 3<sup>rd</sup> applicant's affidavit in support of the motion, that it is only the 1<sup>st</sup> and 3<sup>rd</sup> applicants who seek to be joined as defendants and the other applicants do not. That the application and the supported affidavits are not what is envisaged by O.1 rule 10 (2) of CPR that the applicants have failed to make a case for their presence in court as

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necessary to enable the court effectually and Counsel relied on the case of Gakon & Brothers Enterprises Ltd Vs Scas Uganda Ltd Misc. Application No. 431 of 2005 court held

**“that it is for the plaintiff to select which person shall be the defendant in the suit land and the plaintiff cannot be compelled to sue a particular defendant. That order 1 rule 10(2) is not mandatory upon the respondent. That the 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> applicants did not file affidavits in support of the notice of motion”.**

Counsel submitted that the applicants cannot defend fraud in civil suit No. 21 of 2014 against the land title of Robert Basingaraho the Registered proprietor. That fraudulent dealings in the suit land above are alleged against the registered proprietor and Hoima District land Board for which the respondents have proof but don't have any against the applicant to substantiate fraud and consequently cancellation of the certificate of title. That the 3<sup>rd</sup> applicant's affidavit in support does not make out a case against the respondents who claim an interest in the suit land. That the suit land is still in the names of another registered proprietor and not the 3<sup>rd</sup> applicant. Relying on the case of Management committee of Rubaga Girls School Vs Dr. Bwongi Kanyerezi, court of Appeal Civil Suit No. 34 of 1999 it was held that

**“it is well settled that it is always for the applicant to make out his case and if he does not, his opponent need not file any affidavit at all”.**

Further it was held that;

**“failure to file an affidavit in reply by the respondents means of the applicants averment is a curious proposition. It is well settled that it is always for the applicant to make out his case and if he does not, his opponent need not to file any affidavit”.**

That the applicants have not put up a credible case.

That such application if allowed would be of no good both to the suit, the respondents and original defendants. That the case of Fernandes vs Kara Arjan and sons (1961) EA 693, illustrates the futility of ordering the respondents to proceed against the Applicants without the respondent consent and the respondents will loss and pay costs owing to a lack of a cause and proof in the main case.



The issue for determination is whether the Applicant can be added as a Defendants in *Civil Suit No. 21 of 2014* 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 or strike out or substitute a plaintiff or defendant may be made to the court at any time before trial by motion 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. vs. 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. In the case of *Yahaya Kariisa v. Attorney General & Another*, S.C.C.A. No.7 of 1994 [1997] HCB 29. It was noted that the main purpose of joining parties to a case is to enable the court to deal with the matter brought before it and avoid multiplicity of proceedings. 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 elaborated in the case of the Departed Asians Property Custodian Board v. Jaffer Brothers Ltd [1999]1 E.A 55, where it was held 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".**

In the instant application, the 3<sup>rd</sup> Applicant deponed under paragraph 2 of her affidavit in support of the motion that they are jointly the lawful owners of the property comprised in FRV 1051 Folio 16 Buhaguzi Block 7 Plot 44. Under paragraph 7 she together with the other Applicants have interest in the suit land and they are in possession of the same. Although the same was wrongly registered in the names of Bansigaraho Robert who is the 1<sup>st</sup> defendant in the main suit, it was decreed by consent vide Civil Suit No. 32 of 2012 that the suit land belonged to the applicants and Bansigaraho Robert had to effect transfer in the names of the applicant which was not yet done. In addition, the Respondent in the main suit seeks for orders, *inter alia*, of cancellation of certificates of title comprised in FRV 1051 Folio 16 Buhaguzi Block 7 Plot 44 for having been processed and secured fraudulently, including the Respondents' customary land. Logically, an order affecting the 1<sup>st</sup> 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 Applicants 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 should 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.



In the instant application, however, the adding of the Applicants as defendants by order of court exercising its discretion within the provisions of the law, would not amount to "forcing" the Respondents/Plaintiffs to sue someone they do 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 Applicants ought to have been sued since they are in physical possession of the suit land and directly claims interest therein, while the Respondents are seeking to take over the same land as customary tenants. Suing only the 1<sup>st</sup> Defendant parties who no longer has no any vested interest in the suit land and leaving out the Applicants who had a consent with the 1<sup>st</sup> Defendant and it was decreed that the certificate of title be transferred in their names (Applicants), 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 Applicants should be; and they are added as a party to the case as Defendants. I therefore order that the Applicants therein be; and they are hereby added as a party to the Civil Suit No. 21 of 2014 as Defendants. Costs of the applications will be in the cause.



Gadenya Paul Wolimbwa

**JUDGE**

19/8/2020

This decision will be emailed by the Registrar on 19/8/2020 to the Parties as part of the measures to limit the spread of Covid-19.



Gadenya Paul Wolimbwa

**JUDGE**

19/8/2020

*Gadenya Paul Wolimbwa*  
*Judge*