

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT MASINDI
MISC.APPLICATION NO. 017 OF 2020

(Arising from C.S No. 011 of 2020)

UGANDA MUSLIM SUPREME COUNCIL ::::::::::::::::::::::::::::::::::: APPLICANT

VERSUS

1. RAYYAN ASSOCIATION LIMITED

2. BAMWENDA HASSAN ::::::::::::::::::::::::::::::::::: RESPONDENTS

Before: Hon. Justice Byaruhanga Jesse Rugyema

RULING

- [1] This is an application brought under **S.98 CPA, S.39 of the Judicature Act, O.1 r.13 and O.52 rr.1 & 2 CPR** seeking for orders that leave be granted to the Applicant to be joined or added as a party to the main suit and costs of the application.
- [2] The grounds upon which this application is premised are set out in the supporting affidavit of **Kaggwa Rashid**, the District Secretary **Bunyoro Muslim District Council** which briefly are:
1. *That the property/school under litigation in C.S No.11/2020 is registered in the names of the Applicant under **plot 17-23 and 25-17 Vol.2429, Folio 12 & 13 Hoima.***
 2. *That the Applicant has never leased or entered into any transaction in respect of the suit property to anybody or entity.*
 3. *That as a result, the deponent has found it prudent to add the Applicant, Uganda Muslim Supreme Council as a party to the main suit for proper determination of the issues before court and that if the applicant is not added as a party to the main suit, it will be detrimental to the Muslim Community over mismanagement of their property.*
- [3] The 1st Respondent opposed the application and its director **Kaahwa Hussein Burhan** in brief deponed as follows:

1. *That it is not true that in any way the issues to be resolved by court in C.S No.11/2020 have any bearing on the Applicant herein as the remedies sought in that matter are against actions that were committed by the 2nd deponent in his own personal capacity.*
2. *That the 1st Respondent through **Ummah Islamic** applied to tender **Hoima Town Mosque Nursery and Primary School** from the **management Committee of Hoima Town Mosque** and subsequently tendered in the outsourcing management proposal, offer and acceptance and the formal contract was endorsed by the **District Khadh** and that therefore, there is no way the Applicant can allege that this was not within its knowledge when the executed formal contract for outsourcing was signed by the **District Khadh** on behalf of **Hoima Town-Mosque**.*

Background of the Application

- [4] The 1st Respondent/plaintiff filed **C.S No. 11/2020** for recovery of damages for loss of property as a result of the 2nd Respondent/defendant's actions, costs, interest thereon and to secure a permanent injunction restraining the 2nd Respondent/defendant from interfering with the management of **Hoima Town Mosque Nursery & Primary School**, trespassing on the school property or premises, communication to the public or any form of advertisement of the defendant's process of rebranding the school.
- [5] The 2nd Respondent/defendant filed a Written Statement of Defence (**W.S.D**) to **C.S No. 11/2020** in which he alluded to having acted for and on behalf of the Applicant as the lawful owner of the suit property/school and body with the mandate to lease, sale or donate any muslim assets or property hence the instant application seeking to add the applicant as a party/defendant to the main suit.
- [6] The issues for determination in this application are:
1. Whether the Applicant may be added as a necessary party to H.C.C.S. No.11 of
 2. 2020.
 3. What remedies are available to the parties.

Issue No.1: Whether the Applicant may be added as a necessary party to the suit.

[7] Under **O.1 rr.1 & 3 CPR**, this court is empowered to join parties who may have a claim or relief on the subject matter under issue.

O.1 r.10 (2) CPR, 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 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, whose presence before the court may be necessary in order to enable the court effectively and completely to adjudicate upon and settle all questions involved in the suit, be added.”

The procedure for bringing such an application is provided for under **O.1 r.13** thus;

“An application to add or strike out a plaintiff or defendant. An application to add or strike out 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 a summary manner.”

[8] 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 orders sought would legally affect the interest of that person and that it is desirable to have that person joined to avoid multiplicity of suits, or that the defendant could not effectively set up a desired defence unless that person was joined or an order was made that would bind that other person; **Departed Asian Custodian Board Vs Jaffer Brothers Ltd [1999] 1 E.A 55.**

[9] The purpose of joinder of parties is therefore to avoid multiplicity of suits. Under **S.33 of the Judicature Act**, court has powers to grant remedies so that as far as possible all matters in controversy between the parties are completely and finally determined and all multiplicity of legal proceedings concerning any of the matters avoided. It is therefore of a fundamental importance or 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; See also **Gokaldas Laximidas Tanna Vs Store Rose Muyinza, H.C.C.S No. 7076/1987 [1990-1991] KALR 21.**

- [10] In the instant application, the Applicant seeks to be joined/added as a defendant in the main suit which was filed by the 1st Respondent against the 2nd Respondent where the 1st Respondent through **Ummah Islamic Committee** applied to tender and were offered a tender by the **Management Committee of Hoima Town Mosque** to manage **Hoima Town Mosque Nursery and Primary School**. It is the contention of the applicant that it is the lawful owner of the suit property/school, implying that it intends to challenge the tendering of the suit property/school to the 1st Respondent.
- [11] Indeed, on the other hand, the 2nd Respondent/defendant contended that the **Hoima Town Mosque Nursery and Primary School** is owned by **Uganda Muslim Supreme Council**, the Applicant which body has the mandate to lease, sale or donate any Muslim Assets or property. The 2nd Respondent/defendant therefore sought in a counter claim for a declaration that the suit property belongs to the Applicant and that the contract between **Hoima Town Mosque** and the 1st Respondent/plaintiff for tendering the management of the **Hoima Town Mosque Nursery and Primary School** is unlawful, null and void.
- [12] The Applicant is claiming to have a legal interest in the suit property; **Hoima Town Mosque Nursery and Primary School** which the 1st Respondent/plaintiff has tendered to manage from the **Management Committee of Hoima Town Mosque**. The Applicant is in the circumstances duty bound to protect and preserve its properties for the benefit of the Muslim Community. The Applicant can only do so when it is given a right to a hearing in the main suit by permitting this application; See **Eng. Pascal R. Gakyaro Vs Civil Aviation Authority C.A.C.A No. 60 of 2006**.
- [13] The Applicant is likely to be affected by the orders of this court in respect of the suit property/school and as a result, it is important that it is joined/added as a defendant to the main suit for proper determination of all the issues before court.

Remedies to the parties

- [14] The claim that the Applicant has never leased or entered into any transaction in respect of the suit property/school and the contention that since the contract to tender out the suit property/school was endorsed by the **District Khadh**, the applicant cannot claim not to had

known the transaction, all embody triable issues for determination of the suit that should involve the Applicant.

[15] In conclusion, I find that in the above circumstances, it would be appropriate and in the interests of justice that all matters touching the subject matter on the suit property/school be determined finally and completely, to avoid litigating over the same matters again. The Applicant is in the premises added as a party to the case as a defendant. The Applicant is directed to effect the necessary amendments to the defence pleadings and or by filing a W.S.D. and to serve the other parties within 15 days from the date hereof.

[16] This application is in the premises granted in the above terms and costs shall be in the cause.

Dated at Masindi this 23rd day of **June, 2022.**

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Byaruhanga Jesse Ruyema
JUDGE.