

THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT MASINDI  
MISCELLANEOUS APPLICATION NO. 115 OF 2022  
(Arising from C.S. No. 25 of 2016)

OTADA AMOOTI SAM ::: APPLICANT

VERSUS

1. PASTOR ROBERT KILAMA

2. ATTORNEY GENERAL OF UGANDA ::::::::::::::::::::::::::::::::::::::: RESPONDENTS

**RULING**

***Before: Justice Byaruhanga Jesse Rugyema***

- [1] This application is brought by way of Notice of Motion under **O.1 r.13 & O.52 CPR** seeking for the following orders:
1. An order adding the Applicant as a co-defendant in **Civil Suit No.25 of 2016**.
  2. The pleadings, including the Plaintiff and the Written Statement of defence of the defendant, be amended to include the Applicant as a co-defendant.
  3. Provision be made as to costs of this application.
- [2] The application is premised on several grounds and is supported by the affidavit of the Applicant, **Mr. Otada Amooti Sam**, briefly, the major ground is:
- That the suit land customarily belongs to the Applicant who and his family members use it as a cultural and ritual site where they conduct annual and other periodic ceremonies and therefore are an interested party with equitable interests in the suit land having obtained letters of administration in the estate of the late Opio Peter Owor.***

- [3] The 1<sup>st</sup> Respondent on the other hand, opposed the application denying the Applicant claims on the major grounds that;  
*H.C.C.S No.25 Of 2016; Pastor Robert Kilama Vs A.G was consolidated with H.C.C.S No.47 of 2017; Okello Walter Vs A.G.*

*The 1<sup>st</sup> Respondent bought the suit land from a one late Lawoko Francis in 1995, took immediate occupation, utilized the same by construction and planting crops thereon without any disturbances till 2011 when the Government of Uganda through the Ministry of Energy and Mineral development took up the entire land for purposes of developing a hydro power. That therefore it is not necessary to add the Applicant as a co- defendant because he is not affected by any of the issues in the main suit, he is thus a stranger to the main suit.*

The 2<sup>nd</sup> Respondent Attorney General did not object to the addition of the Applicant as a co-defendant in the suit.

### **Counsel Legal representation**

- [4] The Applicant is represented by **Dr. Adam Makmot-Kabwanga of Makmot-Kabwanga & Co. Advocates, Kampala** while the 1<sup>st</sup> Respondent is represented by **Mr. Jabbo Obbo of Ms. Zagyenda & Co. Advocates, Kampala**. The counsel filed their respective written submissions as permitted by this court.

### **Brief background**

- [5] In **H.C.C.S No.25/2016**, the 1<sup>st</sup> Respondent, **Pastor Robert Kilama** sued the 2<sup>nd</sup> Respondent, **Attorney General Chambers** for a declaration that he is the lawful owner of land situate at **Karuma and Awoo villages, Kiryandongo District** measuring 60 acres of un surveyed land which he claim to had owned under the customary tenure, having acquired the same in 1995 from the late **Lawoko Francis**.
- [6] This suit was consolidated with its sister file **C.S No.47 of 2017; Okello Walter Vs A.G** for the plaintiff therein was seeking similar remedies regarding the suit land.

- [7] By court's order dated **23/2/2017**, the A.G and the Permanent Secretary Ministry of Energy and Mineral Development directed for a joint verification exercise to be conducted to establish the ownership, size of the land and any other issues of encumbrances on the suit land. On the **27/7/2017**, a joint verification inspection and survey report was concluded with recommendation that the suit land belonged to the 1<sup>st</sup> Respondent and that the Government of Uganda should compensate him accordingly.
- [8] The Joint verification exercise however did not include the participation of the Applicant who is nevertheless named in the Report to be, among others, the actual neighbour of the suit land.
- [9] It is the contention of the 1<sup>st</sup> Respondent that he had been on the suit land undisturbed until 2011 when the Government of Uganda through the Ministry of Energy and Mineral Development took up the suit land for purposes of developing a Hydro-power station. The Applicant however, now seeks to be added as a co-defendant claiming an equitable interest in the suit land - that he and the other family members customarily own the suit land for they have been using the land for cultural and or ritual purposes.

### **Issues for determination**

- [10] a) Whether the Applicant is entitled to an order adding him as a co-defendant in Civil Suit No.25 of 2016.  
b) What remedies are available to the parties

### **Resolution of Issues**

#### **a) Whether the Applicant is entitled to an order adding him as a co-defendant in Civil Suit No.25 of 2016.**

- [11] The Civil Procedure Rules allow for the joinder of parties. The rules under **O.1 r.3, 10(2) & 14 CPR** provide for addition, striking out as well as substitution of the parties. **O.1 r.3 CPR** provides thus;  
*"All persons may be joined as defendants against whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist, whether jointly, severally or in the alternative, where, if separate*

*suits were brought against those persons, any common question of law or fact would arise.”*

[12] In **Amon Vs Raphael Tuck & Sons Ltd, (1956) 1 All ER p.273**, cited in **Departed Asians Property Custodian Board Vs Jaffer Brothers Ltd, S.C.C.A No.9/1998 [1999] 1 E.A 55**, Court observed that;

*“A party may be joined in a suit, not because there is a cause of action against it, but because that party’s presence is necessary in order to enable the court effectively and completely adjudicate upon and settle all the questions involved in the cause or matter.”*

[13] Before a person can be joined as a party, it must be established that the party has high interest in the case and that the orders sought in the main suit would directly and legally affect him or her; **Departed Asians Property Custodian Board Vs Jaffer Brothers (supra)**.

[14] In the instant case, the Applicant applies to be joined as a defendant because he claims an equitable interest in the suit land. As per his affidavit in support of the Application, the major ground is;

***That the suit land customarily belongs to the Applicant who and his family members use it as a cultural and ritual site where they conduct annual and other periodic ceremonies and therefore are an interested party with equitable interests in the suit land having obtained letters of administration in the estate of the late Opio Peter Owor***

In the first instance, in my view, the mere carrying out of cultural and ritual ceremonies, without more, does not confer any interest upon the applicant on the suit land. No proof has been attached to the Application that the suit land is a cultural and ritual site of the family members of the Applicant. 2ndly, the Applicant claim to had obtained letters of administration in respect of the estate of the late **Opio Peter Owor**. The Applicant has not shown any linkage or relationship between himself and the late **Opio Peter Owor** and or how he derives interest from the said **Opio Peter Owor**. Lastly, it has not been shown what interest the late **Opio Peter Owor** had in the suit land.

[15] On the other hand, the 1<sup>st</sup> Respondent in **C.S No.25/2016** sued the 2<sup>nd</sup> Respondent for a **declaration that he is the lawful owner of land situate at Karuma and Awoo villages, Kiryandongo District, measuring approximately 60 acres of un surveyed land tenure**. He

attached to his affidavit in reply a Joint verification exercise report conducted by all the stake holders in the project affected land intended to establish the ownership of the suit land and it was issued in his favour. He also attached a survey report and boundary opening of **plot 9 block 3** Kibanda county at Karuma Trading Centre for purposes of determining the size of the 1<sup>st</sup> Respondent's land and the joint survey concluded recommending for compensation of 72.3 acres of land, the 1<sup>st</sup> Respondent owned in and around plot 9 block 3.

## **Remedies**

[16] The adding or striking off a party to pleadings is in the discretion of court which must be exercised judiciously basing on sound principles; **Yahaya Kariisa Vs A.G & Anor, S.C.CA No.7 1994**. This court in the exercise of its jurisdiction vested in it by law may grant absolutely or on such terms and conditions as it thinks just, all such remedies as any of the parties to a cause or matter is entitled to in respect of any legal or equitable claim properly brought before it, so that as far as possible all matters in controversy between the parties may be completely and finally determined and all multiplicities of legal proceedings concerning any of those matters avoided. I find that in this case, the applicant has not demonstrated that the orders sought in the main suit shall legally affect him. This court is not inclined to grant the application in adding of the applicant as a co-defendant in **Civil Suit No.24 of 2016**.

[17 ] The application is accordingly dismissed.

No order as to costs.

Signed, dated and delivered at Masindi this **14<sup>th</sup> day of October, 2022**.

**Byaruhanga Jesse Rugyema**

**JUDGE**