

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL DIVISION
MISC APPLICATION NO. 808 OF 2021
(ARISING OUT OF MISC. CAUSE NO. 195 OF 2021)

DR. ERNEST KIRABO KIMBUGWE ----- APPLICANT

VERSUS

- 1. THE REGISTERED TRUSTEES OF
MENGO CENTRAL OLD BOYS CLUB**
- 2. THE ATTORNEY GENERAL ----- RESPONDENTS**

BEFORE: HON. JUSTICE SSEKAANA MUSA

RULING

The Applicant filed an application under Section 33 of the Judicature Act as amended, Section 98 of the Civil Procedure Act and Orders 1, Rule 3 and 13 of the Civil Procedure Rules for the following reliefs;

1. Dr. Ernest Kirabo Kimbugwe, the Applicant be added as a co-respondent to Misc. Cause No. 195 of 2021.
2. The Application be amended accordingly to capture the particulars necessitating the addition of the Application as the 2nd Respondents and;
3. Costs of the Application be provided for.

The grounds in support of this application were stated very briefly in the Notice of Motion and in the affidavit of Dr. Ernest Kirabo Kimbugwe which is detailed but briefly the grounds are;

- a) That the applicant is an interested party in the main cause/ application.
- b) That the main cause challenges decisions made after the applicant had raised queries and complaints relating to the illegal re-composition of Mengo Old Boys Club Kampala when all its members are dead.
- c) That the application is bad and barred in law as it is founded on an illegality and fraud.
- d) That the applicant will suffer loss of his inheritance and injustice as a result of the fraudulent and illegal actions of the 1st respondent.
- e) That in the event that this Honourable court decides this suit in favour of any of the 1st respondent without consideration of the applicant's rights and interests, he will suffer gross injustice and will be condemned unheard.
- f) That there are important issues of law and fact to be adjudicated upon by this Honourable court if the applicant is allowed to be added as a party to the head suit and files his response as a co-respondent.
- g) That the applicant was a few years ago forcefully evicted from land comprised in Kibuga Block 10, Plot 50 at Bukesa, Kampala district without a court order by some people masquerading as trustees of Mengo Central Old Boys Club Kampala wherein the applicant lost valuable properties and earning from his tenants

- h) That the issue at hand is not only the illegal composition of the trusteeship of the Mengo Central Old Boys Club Kampala but also the failed attempt to grab and control ownership of land comprised in Kibuga Block 10, Plot 50 at Bukesa, Kampala District a matter before the High court Land Division vide H.C.CS 16 of 2017.
- i) That the addition of the Applicant as a party to Misc. Cause No. 195 of 2021 is necessary to enable court effectually and completely adjudicate and settle all issues in controversy relating to the legality of the decomposition of the trusteeship of the Mengo Central Old Boys Club Kampala all in this suit.

The respondent opposed this application and filed an affidavit in reply through Mr John Fred Kazibwe, a Board Director of the Registered Trustees of the 1st Respondent who briefly stated as follows;

1. The respondent's application for judicial review vide HCMC No. 195 of 2021 was rightfully instituted before this Honourable Court and in accordance with the provisions of the law.
2. The 1st respondent brought HCMC No. 195 of 2021 seeking for orders for judicial review against the decision of the then Minister of Lands, Housing and Urban Development revoking the consent to amend the 1st Respondent's constitution and approval of the 1st respondent's revised constitution by the former minister which was arrived at illegally, irrationally, unreasonably, is ultra vires and in breach of the rules of natural justice.

3. The High Court Misc. Cause No. 195 of 2021 seeks to challenge the procedure under which the minister revoked the former minister's consent to the 1st respondent to amend their constitution. The said application does not seek to determine the proprietary interests of land comprised in Kibuga Block 10 Plot 50 or any other proprietary interests of the 1st respondent.
4. The subject matter of the application for judicial review and the determination if the same does not affect the applicant's alleged interests in the property comprised in Kibuga Block 10 Plot 50.
5. The applicant does not have any interest in the land comprised in Kibuga Block 10 Plot 50 in the land whatsoever. The said property is of the 1st respondent.

The applicant was represented by *Mr Muganga John Patrick* whereas the respondent was represented by *Ms. Akampurira Patricia*.

At the hearing of this application the parties were advised to file written submissions which I have had the occasion of reading and consider in the determination of this application.

Three issues were framed by the applicant for court's determination;

1. *Whether the applicant is a necessary party to Miscellaneous Cause No. 195 of 2021 to warrant his addition as a party.*
2. *What remedies are available to the parties*

Resolution

Whether the applicant is a necessary party to Miscellaneous Cause No. 195 of 2021 to warrant his addition as a party?

The applicant submitted that the law on addition of parties is provided for under Order 1 Rule 10 (2) of the Civil Procedure Rules. Counsel for the applicant contended that a party must be added if the addition would facilitate the determination of the real issues in the suit. He noted that the applicant herein pleads illegality and error which was not brought to the attention of the court by the applicant in the head cause and can only be brought to the attention of court if the he is added as a party.

Counsel submitted that the applicant was among the persons who moved the Honourable Minister of Lands, Housing and Urban Development that resulted into the decisions being challenged by the applicant in the main cause. He stated that it will be unfair for this court to make a decision annulling the Minister's decision without hearing from the affected persons.

Counsel also submitted that the rationale for addition of parties is premised on the need to prevent multiplicity of suits by interested parties over the same subject matter. He stated that the applicant in the instant case holds high interest in the matter before court in the head suit and he further pleaded illegality which once brought to the attention court, will have an influence on the outcome of the entire suit. He further submitted that the orders sought by the first respondent would affect the applicant and he cannot put up a desirable defence unless he is joined to the main suit.

Counsel therefore prayed that this court exercises its discretion and add the applicant to meet the ends of justice in the main suit.

Counsel for the 1st respondent submitted that the applicant has not fulfilled the grounds to warrant the grant of this application as are laid out in the case of *Departed Asians Property Custodian Board vs Jaffer Brother Ltd Civil Appeal No. 9 of 1998*. He stated that the applicant has not adduced any evidence to support the assertion that his addition as a party would facilitate the determination of the real issues in the suit. The 1st respondent stated that the applicant avers that the 1st respondent committed fraudulent and illegal actions and yet under Order 6, Rule 3 of the Civil Procedure Rules, fraud must be particularly pleaded and this can only be done by way of ordinary plaint. Counsel therefore submitted that matters of fraud cannot be dealt with by way of affidavit evidence as they must be particularly pleaded and strictly proved beyond a balance of probabilities as held under *Yahaya Walusimbi vs Justine Nakalanzi & 4 Ors M.A No. 386 of 2018*.

Counsel also stated that the applicant raises matters of personal interests as the basis for the prejudice that will be occasioned to him if he is added as a party and yet the issues before court in the main application are matters of private law. He further submitted that the applicant has notwithstanding not proved the nature of his alleged interests in the suit land that he seeks to protect as he is not the registered proprietor.

It was also submitted for the respondent that the applicant seeks to be added as a co-respondent to MC. No. 195 of 2021, an application for judicial review so as to

have his personal rights in the suit land protected yet such rights are matters of private law which cannot be resolved in a judicial review application which deals with public law principles. He also stated that the applicant does not fall under the list of parties amenable to judicial review to warrant his addition as a party.

Counsel therefore submitted that the application is not proper for the addition of the applicant as a co-respondent to the judicial review application and ought to be dismissed with costs to the 1st respondent.

Analysis

The issue for determination is whether the Applicant can be added as a Defendant in Miscellaneous Cause No. 195 of 2021 in the circumstances of this case. The law on joinder of parties to pleadings is governed under **Order 1, Rule 10 (2) of the Civil Procedure Rules** 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, Rule 13 of the Civil Procedure Rules.

Clearly, under Order 1, Rule 10 (2); 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*)

It is important to note that 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. (*See: Yahaya Kariisa vs. Attorney General & Anor, S.C.C.A. No.7 of 1994 [1997] HCB 29*)

It is important to note the purpose of joinder of parties. According to *Samson Sempasa vs P.K. Sengendo H.C.M.A No.577 of 2013*, the purpose of joinder of parties is to enable court to effectually and completely deal with the matter in controversy and avoid multiplicity of proceedings.

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 and legally affect the party seeking to be added. These considerations have been amplified by the Supreme Court of Uganda in the case of the *Deported Asians Property Custodian Board v. Jaffer Brothers Ltd [1999] I.E.A 55*, where court noted 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. (*See also: Gokaldas Laximidas Tanna vs Store Rose Muyinza, H.C.C.S No. 7076 of 1987 [1990 – 1991] KALR 21*)

I have carefully appreciated the averments in the Applicant's affidavits. In these, he avers that the orders in Miscellaneous Cause No. 195 of 2021 will affect his interest in respect of the land comprised in Kibuga Block 10 Plot 50 at Bukesa, Kampala District which he claims, which makes his joinder necessary.

The Applicant gave reasons how the orders of that application will affect him and why it is necessary to have him joined as a respondent in that application. This being that among others that the land described as Kibuga Block 10, Plot 50 at Bukesa, Kampala is occupied by himself and the descendants of the late Senti Serwano who was a member of the Mengo Central Old Boys Club- Kampala. He stated that Mengo Central Old Boys Club- Kampala was illegally registered on the estate land of Senti and that the 1st respondent have reconstituted itself having amended the Constitution of the Mengo Central Old Boys Club- Kampala and further evicted the applicant from the suit land to which he claims an interest.

I have had an opportunity of reviewing the application in Miscellaneous Cause No. 195 of 2021; the Registered Trustees of Mengo Central Old Club vs Attorney

General brought under Articles 28, 42, 44 and 120 (5) of the Constitution, section 36 of the Judicature Act, section 98 of the Civil Procedure Act and Rules 3, 4 and 6 of the Judicature (Judicial Review) Rules. The said application is for judicial review for orders that the decision of the Minister of Lands, Housing and Urban Development to revoke the consent to amend the applicant's constitution and approval of the applicant's revised constitution by the former minister were arrived at illegally, irrationally, unreasonably, is ultra vires and in breach of rules of natural justice, orders of certiorari, prohibition, an injunction, general damages and costs of the application.

For purposes of determining this application, it is important to note that judicial review is concerned with the courts' supervisory jurisdiction to check and control the exercise of power by those in public offices or person/bodies exercising quasi-judicial functions by the granting of prerogative orders as the case may fall. It is also pertinent to note that the orders sought under Judicial Review do not determine private rights. The purpose is to ensure that the individual is given fair treatment by the authority to which he/she has been subjected to. *See; John Jet Tumwebaze vs Makerere University Council & 2 Others Misc Cause No. 353 of 2005, DOTT Services Ltd vs Attorney General Misc Cause No.125 of 2009, Balondemu David vs The Law Development Centre Misc Cause No.61 of 2016.*

Judicial review is available where it is established that the body under challenge is a public body whose activities can be controlled by judicial review and that the subject matter of the challenge involves claims based on public law principles and not enforcement of private law rights.

In the instant case, it can be deduced that the applicant seeks to be joined as a party to Misc. Cause No. 195 of 2021 to facilitate the determination of issues in respect of fraud and proprietary interest for the land comprised in Kibuga Block 10 Plot 50 at Bukesa which are not public rights to be determined under an application for judicial review. Furthermore, the applicant is not amenable to judicial review which is concerned with public bodies exercising quasi-judicial functions by the granting of prerogative orders of which the applicant is not.

The applicant had a duty to show that their presence is crucial and fundamental to the resolution of a matter before the court could add him as party to the judicial review proceedings. The only reason which makes it necessary to make a person a party to an action is that he should be bound by the result of the action, and the question to be settled therefore must be a question in the action which cannot be effectively and completely settled unless he is a party. See *Okelue v Medukam (2011) 2 NWLR (pt 1230) p 176*

I'm therefore inclined to agree with the 1st respondent's submissions that the orders in Miscellaneous Cause No. 195 of 2021 will not prejudice the applicant herein in any way since they are reliefs provided for under the law to ensure that public offices or person/bodies exercising quasi-judicial functions do so judicially when making decisions in respect of public rights and not private rights. The court should not allow parties who have adverse claims in respect of a property in dispute to join together as parties to prosecute any claim against another party in respect of the same property. The applicant in this case appears to have adverse claims toward the property which the 1st respondent claim ownership.

From the reasons advanced by the Applicant, I failed to find how the orders sought in Miscellaneous Application No. 195 of 2021 will affect applicant in any way since he seeks to determine private rights which are not a subject in the said application he seeks to be joined as a party. The 1st respondent is seeking to challenge the exercise of power by a Minister in exercise of their executive function.

I therefore find that the applicant has not fulfilled the requirements necessary to be added as a party to Miscellaneous Cause No. 195 of 2021.

For reasons stated above, this application is dismissed with costs to the 1st respondent.

I so Order.

SSEKAANA MUSA
JUDGE
30th November 2022