

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(CIVIL DIVISION)
MISCELLANEOUS APPLICATION NO. 519 OF 2022
(ARISING FROM COMPANY CAUSE NO. 020 OF 2022)

HAMDA JABER RASHIED ALHAMELI----- APPLICANT

VERSUS

1. ALSHAFI INVESTMENTS GROUP LLC

2. EMIRATES AFRICA LINK REAL ESTATES LIMITED----- RESPONDENTS

BEFORE: HON. JUSTICE SSEKAANA MUSA

RULING

This is an application to add a party to the original suit-Company Cause brought under Section 98 of the Civil Procedure Act and Order 1 rules 10 & Rule 13 and Order 52 rule 1 & 3 of the Civil Procedure Rules.

The 1st respondent filed an application for eave to call, hold and conduct a meeting of the company without the requisite quorum and pass a resolution appointing Directors and Secretary.

The 2nd respondent as a decree holder against Ahmed Darwish Dagher Al Marar, in HCCS No. 695 of 2017 was granted an order by the High Court to bid for and purchase the 99 shares held by Ahmed Darwish Dagher Al Marar vide Miscellaneous Application No. 1768 of 2021.

The applicant contended that is a holder of 99 shares in Aberdeen Real Estates Limited and 99 shares in Emirates Africa Link Real Estates Limited. The applicants

have filed a case in the Commercial Court against the respondents and that the court is yet to determine the rightful owners of the shares.

The 1st respondent opposed the application with an elaborate history of the dispute over the shares and contended that the applicant has no stake whatsoever in Emirates Africa Link Real Estates Limited to qualify him as a necessary party.

They further contended that the application is tainted with illegalities, is an abuse of the process of court and it is unjust, inequitable and ought to be dismissed with costs.

The application is supported by the affidavit of Apollo Mwesiga (Advocate) a holder of a power of Attorney from the applicant.

The 1st respondent filed affidavits in reply by Nsubuga E. Ssempebwa (Advocate) a holder of powers from the respondent.

The applicant was represented by *Counsel Harold Turigye* while the respondent was represented by *Counsel Siraj Ali*.

In the interest of time court directed the counsel for both parties to file written submissions.

The only issue for determination in this application is:

Whether the applicant should be added as a necessary party to the Company Cause?

The applicant's counsel submitted that the applicant is a holder of 99 shares in Emirates Africa Link Real Estates Ltd and Aberdeen Real Estates Limited and this is the basis for seeking to be added as a necessary party. In addition, the applicant contended that he bought the 99 shares and was successfully registered.

The applicant seems to challenge the transfer of shares in the said company (2nd respondent) which he contends was fraudulent. It is their submission that the directors do not agree with the manner in which the 1st respondent was appointed or made a shareholder.

The 2nd respondent's counsel submitted that this application is part of a continued connivance scheme by Ahmed Darwish Dagher Al Marar, the former owner of the subject shares and judgment debtor in Civil Suit No. 695 of 2017 with the lawyers to deny the 2nd respondent enjoy the fruits of the Judgment delivered in original suit between Al Shaffi Investments Group LLC v Ahmed Darwish Dagher Al Marar.

In 2013, the 1st respondent filed a suit vide Civil Suit No. 292 of 2013 in the High Court of Nakawa for the recovery of AED 149,302,152 and subsequently obtained an order for attachment before Judgment of the subject shares vide Miscellaneous Application No. 555 of 2013. In violation of the said Order in 2014, Ahmed Darwish Dagher Al Marar purported to transfer the shares in 2nd Respondent (Emirates Africa Link Real Estates Ltd, International House of Real Estates Limited and Magma International Limited to the applicant.

The purported sale and transfer of shares in Emirates Africa Link Real Estates Ltd was made in violation of the subsisting court order. Therefore, it was void ab initio and conferred no valid title to the applicant to which the Registrar of Companies had the obligation to cancel the same.

The 1st respondent's counsel further submitted that the applicant's suit pending in commercial court Civil Suit No. 732 of 2022 challenging share transfer or claiming shareholding by the applicant arises out of an illegality or an illegal act of purchase of shares which court had attached before judgment. The Registrar of Companies has cancelled the applicant's registration using statutory powers.

The three firms of advocates that represented Ahmed Darwish Dagher Al Marar attempted to attach the said 99 shares for their advocate/clients costs while at the same time prosecuting proceedings to stay the 1st respondent from attaching the same shares. In all court proceedings prior, the said Ahmed Darwish Dagher Al Marar never disclosed that he ever sold the shares to the applicant and has always defended and opposed the matters as his personal interest as shareholders.

Analysis

The applicant in the notice of motion joined two parties (respondents) to wit; Al Shafi Investments Group LLC and Emirates Africa Link Real Estates Ltd. However,

in the subsequent pleadings or documents (affidavit in rejoinder and submissions) either inadvertently and recklessly changed the 2nd respondent from Emirates Africa Link Real Estates Ltd to Aberdeen Real Estates Limited. I have taken this to be a misnomer with no effect to the application and hopefully it was not intended to confuse or mislead the court.

Under Order 1 rule 10(2) provides for addition or removal of parties;

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.

Both counsel rightly cited the law on joinder of parties and the case of ***Departed Asian Property Custodian Board vs Jaffer Brothers Ltd [1999] 1 EA 55*** where Justice Mulenga JSC noted:

“ In order for a person to be joined to a suit on the ground that his presence was necessary for the effective and complete settlement of all questions involved in the suit, it was necessary to show either that the orders sought would legally affect the interests of that person and that it is desirable to have that person joined to avoid 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”

Proper parties are those, though not actually interested in the claim are joined as parties for some good reasons. Desirable parties are those who have an interest of a suit or may be affected by the reason thereof. While necessary parties are those who not only have interest in the matter, but also who in their presence, the proceedings could not be fairly and effectively be dealt with. See ***Chief of Army Staff v Lawal (2012) 10 NWLR p 62.***

The question of who is a party to an action must be determined depending on the facts of the particular case before the court. Therefore, the main basis is that anyone whose presence is crucial and fundamental to the resolution of the matter before the court must be a party to the 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 or she is a party.

Therefore, the court would order addition or joinder of a party once the presence is necessary to enable the court effectually and completely adjudicate upon and settle all questions involved in the cause or matter. The court ought to peruse the pleadings and the affidavit of the parties. It is desirable that the party intended to be added as party should make sure that there is no conflict of interest or any division of opinion between the original party and themselves that is likely to arise.

When a suit has been filed, the trial court becomes *dominus litis* and it assumes the duty and responsibility to ensure that the proceedings agree with justice of the case by joining, either as plaintiffs or defendants, all persons who may be entitled to or who claim some share or interest in the subject matter of the suit or may likely be affected by results if they had not already been made parties. Any judgment given with an order against a necessary party and desirable party behind its back will be to no avail and it cannot be allowed to stand. See ***N.U.R.T.W v R.T.E.A.N (2012) 10 NWLR (pt 1307) p. 170***

The applicant claims an interest in the company as a purchaser of the 99 shares from Ahmed Darwish Dagher Al Marar in 2013. The purported sale was challenged for illegality since there was a subsequent order of attachment before judgment. Therefore, the said sale was intended to defeat justice by hiding the shares away from possible attachment after determination of the suit.

The applicant's interest in the matter as a shareholder is totally adverse to the 1st respondent as a successful litigant in the HCCS No. 292 of 2013. This cannot be a

basis to be added as a party to a company cause which seeks to hold one member meeting for the company.

The applicant has no locus to be joined as a necessary party and his presence is not necessary as they are not yet members of the company *defacto* and *dejure* until the court has made any pronouncement about their rights in the company over the said shares.

For the determination of the question of who is a necessary party there are two tests; There must be a right to some relief against such a party in respect of the matter involved in the proceedings in question; and It should not be possible to pass effective order in the absence of such a party.

In this case no relief is sought against the applicant and their presence is not necessary to the court determining whether to allow a one member meeting or not.

This application fails and is dismissed with costs.

It is so ordered.

SSEKAANA MUSA
JUDGE
30th/11/2022