

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT FORT PORTAL
MISCELLANEOUS APPLICATION NO. 104 OF 2022
Arising from Misc. Application No. 099 of 2022
Arising from Misc. Application No. 096 of 2014
ARISING FROM CIVIL SUIT NO. 008 OF 2011

ABIMANYIRE MOSES

T/A Abiman-De-Hammer & Associates ::::::::::::::::::::::::::::::: APPLICANT
VERSUS

ATTORNEY GENERAL :: RESPONDENT

BEFORE HON. MR. JUSTICE VINCENT EMMY MUGABO
RULING

Introduction:

The applicant commenced this application under Section 98 of the Civil Procedure Act and Order 1 Rule 10(2), 13 of the Civil Procedure Rules seeking orders that;

- (a) The applicant be added as the 2nd respondent in Misc. Application No. 099 of 2022
- (b) The costs of this application be provided for.

Background:

The background of the matter as gathered from the parties' pleadings is that Eulogio Mulindwa Musoke filed Civil Suit No. 08 of 2011 against the present respondent for recovery of damages for the loss of cattle and buildings at Nyaruzigati ranch which was entered upon by UPDF allegedly to fight against ADF rebels. The suit was successful. Execution of the decree in the said suit ended in a consent whereby the parties therein agreed that the respondent settles the principal decretal sum of UGX

4,609,121,000/= and costs of UGX 60,682,300/=. Pursuant to this, the bailiff in the matter (the present applicant filed his bill of costs which was taxed and allowed at UGX 157,926,000/=. The respondent filed Misc. Application No. 099 of 2022 to review the court decision to award a certificate of costs against government on grounds that the same was issued in error as no costs were awarded by court for execution. The present applicant would be the beneficiary of the costs contained in the certificate being challenged in Misc. Application No. 099 of 2022 but is not a party thereto. Hence this application

The grounds upon which the application is premised are contained in affidavit in support of the application deposed by the applicant in which he averred as follows;

- (a) That the orders sought in Misc. Application No. 099 of 2022 affect the applicant and yet he is not a party to the same
- (b) That the addition and presence of the applicant to the said application is necessary to enable court effectively and completely adjudicate upon and settle all the questions involved in the application.

The respondent has not opposed the application although counsel for the respondent admitted to have been served with the application. This was during the hearing of Misc. Application No. 099 of 2022 on 27-10-2022.

Representation:

M/s Mugabe, Luleti & Co. Advocates represented the Applicant while Ms. Adongo Imelda represents the respondent. The applicant filed written submissions which I have carefully read and considered in this ruling.

Issues:

In my view, from the reading of the pleadings and the written submissions by counsel for the applicants, the only issue that is pertinent for disposal of the application at hand that is;

- (i) Whether the applicant has demonstrated necessity to be added as a party to Misc. Application No. 099 of 2022

Whether the applicant has demonstrated necessity to be added as a party to Misc. Application No. 099 of 2022.

Order 1 rule 3 of the Civil Procedure Rules S.I 71-1 empowers Court to join parties 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.

Order 1 rule 10 (2) of the Civil Procedure Rules 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, 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."

It is trite law 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 or 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 that the order made would bind that other person. ***(Deparated Asians Property Custodian Board v. Jaffer Brothers Ltd [1999] I.E.A 55; See also: Gokaldas Laximidas Tanna v. Store Rose Muyinza, H.C.C.S No. 7076 of 1987 [1990 - 1991] KALR 21).***

I have perused the application and the supporting affidavit. The applicant contends that the orders sought in Misc. Application No. 099 of 2022 affect him in that the said application seeks to challenge costs awarded to him as a bailiff in Civil Suit No. 08 of 2011 and Misc. Application No. 096 of 2014, which were taxed and allowed at UGX 157,926,000/= by the Registrar of this court. He adds that he is aware that Eulogio Mulindwa Musoke who is the respondent in Misc. Application No. 099 of 2022 passed on and that the satisfaction of the said Musoke's judgment debt has nothing to do with the costs awarded to the applicant.

I have also looked at the notice of motion in Misc. Application No. 099 of 2022 and the same seeks to review the order of the court that granted a certificate of costs against government in respect to costs that were taxed in favour of the applicant as a bailiff. The applicant claims that the said order would affect him if it is granted yet he would not have been given a right to be heard.

In my considered opinion, denying this application would mean that the applicant would have to file a separate application to be able to challenge any orders that may arise out of Misc. Application No. 099 of 2022 that may affect him which would only serve to proliferate multiplicity of proceedings which this court is enjoined by law to curtail.

I accordingly find that the applicant has demonstrated necessity to be added as a respondent in Misc. Application No. 099 of 2022 and he is thus

added as such so that court can hear all issues of controversy relating to the different interests in the certificate of costs against government that is sought to be challenged.

The respondent is accordingly ordered to amend the pleadings in Misc. Application No. 099 of 2022 to give effect to this ruling within seven days from the date of this ruling. Any replies to the said application should be filed by the applicant seven days thereafter.

The costs of this application shall abide by the outcome of Misc. Application No. 099 of 2022.

It is so ordered

Dated at Fort Portal this 31st day of January 2023.



Vincent Emmy Mugabo

Judge

The Assistant Registrar will deliver the ruling to the parties



Vincent Emmy Mugabo

Judge

31st January 2023.