

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT FORT PORTAL**  
**MISC. CAAPPLICATION NO. 005 OF 2021**  
**(ARISING FROM CIVIL SUIT NO. 12 OF 2021)**

5 **NATIONAL WATER AND SEWERAGE CORPORATION :::: APPLICANT**

**VERSUS**

**KYENJOJO TOWN COUNCIL ::::::::::::::::::::::::::::::: RESPONDENT**

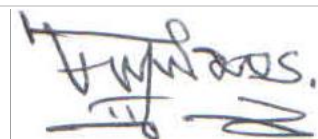
**BEFORE: HON. JUSTICE VINCENT WAGONA**

**RULING**

10 The Applicant brought this application under Order 1 rule 13, 14 (1) and (2) of the Civil Procedure Rules seeking orders that:

1. Leave be granted to the Applicant to issue a third party notice to the Respondent as a necessary party to the suit for purposes of indemnifying the Applicant from liability that may be imposed on the Applicant arising from  
15 *Civil Suit No. 12 of 2021, Sunday Ronald Vs. National Water and Sewerage Corporation.*
2. The Respondent be added as a party to Civil Suit No. 12 of 2021; *Sunday Ronald Vs. National Water and Sewerage Corporation.*
3. That the costs of the Application provided for.

20 The grounds in support of the Application are contained in the affidavit in support of the Application deponed by James Obua, the Applicant’s Branch Manager, Kyenjojo thus:

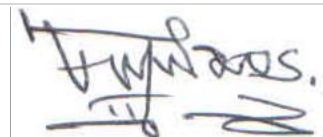


1. That sometime in 2003, the Respondent commenced and operated water supply services in Kyenjojo District which included construction of water supply infrastructure on the suit land in *Civil Suit No. 12 of 2021, Sunday Ronald Vs. National Water and Sewerage Corporation.*
- 5 2. That he was made aware by the Applicant's lawyers that the suit land was subject of a dispute which was resolved by court in favour of the plaintiff.
3. That in 2017, by a statutory instrument by the Minister in charge of Water and Natural Resources, the Applicant was appointed as the Authority in charge of Water and Sewerage Supply in the District of Kyenjojo. That by virtue of the  
10 said appointment, the Applicant took over all the responsibilities and infrastructure from Kyenjojo Town Council and thereby commenced its operations on the suit land.
4. That upon the Applicant commencing its operations on the suit land the plaintiff started demanding for compensation from the Applicant and later filed  
15 Civil Suit No. 12 of 2021 for eviction or in the alternative to be compensated for the land in dispute since its use in 2003.
5. That the Applicant took over operations and possession of the suit land in 2017 from the Respondent and that adding the Respondent as a party to Civil Suit No. 12 of 2021 as a third party is necessary for determining the real question on  
20 trespass and liability between the parties to avoid multiplicity of pleadings. That it was in the interest of justice that the application is allowed.

**Representation:**

The Applicant was represented by M/s Kaddu & Partners who filed written submissions that I have considered.

25 **Issues:**

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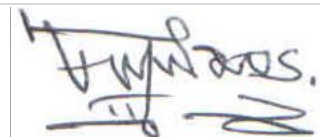
*1. Whether or not a third party notice should be issued against the Respondent by way of adding him as a party to the main suit.*

*2. Remedies available to the parties.*

**Applicant’s Submissions:**

5 Learned Counsel for the Applicant submitted that Order 1 rule 14(1) and (2) of the Civil Procedure Rules is to the effect that where a person /defendant claims to be entitled to contribution or indemnity over or against the person not a party to a suit, he or she may with leave of court, issue a third part notice. That it is trite law that for a third party to be legally joined to a suit, the subject matter as between the defendant and the third party must be the same as between the defendant and the plaintiff and similarly, the cause of action between the defendant and the third must be the same as between the original cause of action between the plaintiff and the defendant. In other words, the defendant should have a direct right to indemnity as such, which right should have, generally if not always, arisen from the contract express or implied. He cited the decision of **NBS Television Vs. Uganda Broadcasting Corporation, Misc. Application No. 421 of 2012** to support his argument.

Counsel submitted that in 2003, the Respondent commenced and operated a water supply service in Kyenjojo District and thereby was the authority in charge of water supply and sewerage services in the district; that the Respondent’s operations involved the construction of water supply infrastructure on the land the subject of Civil Suit No. 12 of 2021. It was submitted that the plaintiff alleges that the unlawful entry took place in 2003 by the Respondent. That the Applicant on the other hand contends that by 2003, the Applicant had not yet started operating any water supply services in Kyenjojo District and the authority in charge then was the Respondent. That the Applicant upon appointment took over the infrastructure from the



Respondent in 2017 and not earlier, thereby commencing its operations in Kyenjojo District.

That it would thus be unjust for the Applicant to carry the fault in Civil Suit No. 12 of 2021 of the alleged trespass which happened before the Applicant took over the management of the infrastructure on the suit land. It was submitted that it is just, fair and equitable that the Respondent is added as a party to shield the Applicant from any liability that may accrue from Civil Suit No. 12 of 2021.

**CONSIDERATION BY COURT:**

**Issue one: Whether or not a third party notice should be issued against the Respondent by way of adding him as a party to the main suit.**

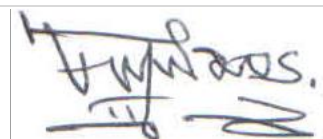
Order 1 rule 12 (1), (2), (3) and (4) provides thus:

*(1) Where a defendant claims to be entitled to contribution or indemnity over against any person not a party to the suit, he or she may, by leave of the court, issue a notice (hereafter called a “third party notice”) to that effect.*

*(2) The leave shall be applied for by summons in chambers ex parte supported by affidavit.*

*(3) A copy of the notice shall be filed and shall be served on such person according to the rules relating to the service of a summons.*

*(4) The notice shall state the nature and grounds of the claim and shall, unless otherwise ordered by the court, be filed within the time limited for filing his or her defence.*

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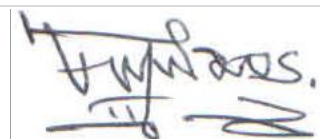
In **Sango Bay Estates Dresdner Bank H971] EA 307**, judicial consideration was given as to the extent and scope of third party procedure where it observed thus:

5 *“the general scope of a third party procedure is to deal with cases in which all disputes arising out of the transaction as between the plaintiff and the defendant and the third party can be tried and settled in the same action. This means that in order for a third party to be lawfully joined, the subject matter between the third party and the defendant must be the same as the subject matter between the plaintiff and the defendant and the original cause of action must be the same. In addition, court can only exercise its discretion to issue a*  
10 *third party notice upon evaluation of the allegations of the plaintiff in terms of his or her claim and the orders sought from court, it is also imperative that Court evaluates the defendant allegations against the third party.”*

Further in **Semanda Isima Moses Vs. Airtel Uganda Ltd & Anor, MA No. 996 of 2020** the Hon. Justice Duncan Gaswaga laid down the principles to be satisfied before  
15 leave to issue a third party notice is granted to include:

- (1) *the Applicant has sufficient grounds to join the Respondent as a third party.*
- (2) *the subject matter between the Applicant and Respondent is the same as the subject matter between the plaintiff and the defendant and the original cause of action.*
- 20 (3) *the Applicant claims indemnity or contribution from the Respondent.*
- (4) *the plaintiff will not suffer any prejudice if the application is granted.*
- (5) *it is in the interest of justice that the suit be heard on its merits.*

The Applicant contended in the affidavit in support of the application that in 2017, by a statutory notice the Applicant was appointed by the Minister in charge of water and  
25 natural resources to take charge of water and sewerage supply in Kyenjojo District.

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That by the time they took over, the Respondent was in charge of the water facility on the suit land and the Applicant commenced their works there. That later the plaintiff filed the suit at hand alleging that he is the owner of the suit land and demanded compensation from 2003 when the alleged trespass happened.

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I am satisfied that the Applicant has established sufficient cause to add the Respondent as a party to Civil Suit No. 12 of 2021. The plaintiff in the head suit seeks compensation from 2003 when he avers that the alleged trespass happened, while the Applicant asserts that by then, they were not in possession of the suit land but the Respondent was. Further the alleged trespass per the pleadings commenced in 2003 when, the according to the Applicant, the Respondent was in possession and use of the suit land and not the Applicant. I believe the Applicant is entitled to contribution from the Respondent in the event the suit succeeds specifically as to compensation for the period the Respondent was in use of the suit land.

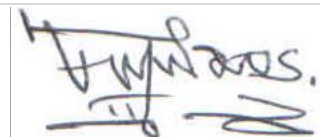
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The subject matter between the Applicant and the Respondent is the same as between the plaintiff and the defendant. The claim is as regards ownership and trespass on the suit land which formerly was used by the Respondent. I believe if the Respondent is added as a party, it will help court in ascertaining how and when the suit land was acquired by each of the parties. I believe this ground is proved by the evidence on record.

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I have not found any prejudice that the plaintiff shall suffer in the event the Respondent is added as a party to the main suit. The plaintiff shall have an opportunity to challenge the Respondent's title over the suit land.

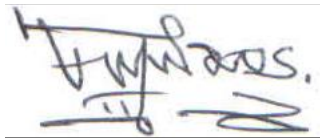
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The Applicant has in my view proved all the grounds to the satisfaction of court warranting issuance of a third party to the Respondent. This Application is therefore granted with the following orders:

- 5           **1. That leave is hereby granted to the Applicant for the issuance of a third party notice to the Respondent as a necessary party in Civil Suit No. 12 of 2021; Sunday Ronald Vs. National Water and Sewerage Corporation.**
- 2. That the Respondent be added as a party in Civil Suit No. 12 of 2021; Sunday Ronald Vs. National Water and Sewerage Corporation.**
- 10           **3. That the costs of taking out this Application shall be met by the Applicant.**

**It is so ordered.**



Vincent Wagona

15   **High Court Judge**

**FORT-PORTAL**

**27.02.2023**

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