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The Republic of Uganda
 In the High Court of Uganda Holden at Soroti
 Miscellaneous Application No. 111 of 2022
(Arising from Civil Suit No. 12 of 2020)

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- 1. Ateria Gedion
- 2. Asio Jessica ::: Applicants

Versus

- 1. Attorney General
- 2. Katakwi District Local Government ::: Respondents

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Before: Hon. Justice Dr Henry Peter Adonyo

Ruling

1. Introduction

The applicants brought this application against the respondents by Notice of Motion under Section 98 of the Civil Procedure Act, Cap 71 and Order 1 Rule 10(2), Order 52 Rules 1,2, and 3 and Order 6 Rules 19 and 31 of the Civil Procedure Rules, SI 71-1 seeking for orders that;

- a) Uganda Land Commission be added as the 3rd defendant in Civil Suit No. 12 of 2020.
- b) The applicants be granted leave to amend their pleadings.
- c) Costs of the application be provided for.

The grounds upon which the application is anchored are contained in the application and also in the affidavit in support of the application deposed by Ateria Gedion, the 1st Applicant for her own behalf but also on behalf of the 2nd applicant vide the authority to depose dated 20th July, 2022.

The grounds are briefly that;

- 5 a) The applicants are the lawful customary owners of the suit land situate at Ajasai village, Getom parish, Katakwi sub-county, Katakwi district along Soroti – Moroto road.
- b) The 1st and 2nd respondents trespassed on the suit land which led the applicants to sue them in this Honourable Court for recovery of the said land vide Civil Suit No. 12 of 2020 and the said suit is pending hearing.
- 10 c) The 1st and 2nd respondents in their Written Statement of Defence to the court alleged that the proposed 3rd respondent (Uganda Land Commission) has a certificate of title registered in its name over the suit land hence the registered owners of the suit land thereof.
- 15 d) The fact of a certificate of title over the suit land is a new issue that was never in the knowledge of the applicants hence the need to make a prayer to have the same cancelled by this Honourable Court.
- e) The presence of Uganda Land Commission as the 3rd defendant in the main suit is, therefore, necessary to enable the court to effectively and completely adjudicate upon and settle all questions of ownership involved
- 20 in the suit and avoid a multiplicity of suits.
- f) The applicants shall suffer irreparable damage if at all their rights in the suit land and property are determined without affording them the opportunity to add the proposed 3rd defendant in Civil Suit No. 12 of 2020.
- 25 g) That it is just and equitable that the orders sought herein be granted.
- h) That the interest of justice warrants that the orders sought herein are granted.

The 1st and 2nd respondents did not file an affidavit in reply to the applicant's application despite having been served and acknowledged receipt of service of

30 the same.

(See: Affidavit of service dated 8th September 2022 deposed by Nangulu Robert.)

5 2. Representation:

The applicants were represented by M/s Nangulu & Mugoda Advocates. The applicant filed written submissions which the court is grateful to counsel for and the same has been considered accordingly.

3. Issues for determination of the Application:

10 a) Whether Uganda Land Commission can be added as a defendant in Civil Suit No. 12 of 2022?

b) What remedies are available to the parties?

4. Resolution of this Application:

15 a) Issue 1: Whether Uganda Land Commission can be added as a defendant in Civil Suit No. 12 of 2022?

This is an application for adding Uganda Land Commission as the 3rd defendant to Civil Suit No. 12 of 2020 since the representative of the 1st and 2nd defendants in their Written Statement of Defence indicate that the suit land, which is the subject of the suit, is wholly owned by Uganda Land Commission which is the proposed 3rd defendant given the fact that the impugned certificate of title in respect to the suit land is in its names.

The position of the law in respect of situations such as this is found in Section 98 of the Civil Procedure Act, Cap 71 provides that

25 **“Nothing in this Act shall be deemed to limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.”**

This position of the law is further elucidated by Order 1 Rule 10 (2) of the Civil Procedure Rules SI 71-1 which provides that;

30 2) **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**

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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.

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3)Not applicable.

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4) Where a defendant is added or substituted, the plaint shall, unless the court otherwise directs, be amended in such manner as may be necessary, and amended copies of the summons and of the plaint shall be served on the new defendant, and, if the court thinks fit, on the original defendants.

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Additionally, Order 6 Rules 19 of the Civil Procedure Rules, SI 71-1 grants this court the powers to at any stage of the proceedings, to allow either party to alter or amend his or her pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties.

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In **The Code of Civil Procedure, (Vol 1, 17th Edn, Lexis Nexis) at page 102,** Sir Dinshah Fardunji Mulla, while commenting on the effect of Order 1 Rule 10(2) of the Civil Procedure Rules, had this to say;

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“Under Order 1 Rule 10(2), the court has the discretion to order any person to be joined as a plaintiff or defendant or as a person whose presence before the court may be necessary in order to enable the court effectively and completely to adjudicate upon and settle all questions involved in the matter before it. Such a person may be joined even if the plaintiff has no cause of action against him or her provided

5 **that such party's presence is necessary for effectual and complete
adjudication and settlement of all the issues involved in the suit before
the court."**

I am at fours with the position of the law and the learned opinion of opinion of
Sir Dinshah Fardunji Mulla but would further add that one of the purposes of
10 joining parties, as even pointed out by counsel for the applicants, is to enable the
court to deal with matters which have brought before it judiciously in order to not
only avoid a multiplicity of suits but also enable the court to effectively determine
the real question (s) in controversy given the fact that in some situations,
declarations , such as those proposed by the applicant/ plaintiffs herein would
15 have legal bearing on other persons which in the instant case is the Uganda Land
Commission.

In making this conclusion, I am further persuaded by the holding of the Supreme
Court decision in *Departed Asian Property Custodian Board vs Jaffer Brothers
Limited [1999] 1 EA 55* wherein Hon. Justice G. W. Kanyeihamba, JSC (who
20 gave the lead judgment) observed that;

*"I agree with the submission of counsel for the Respondent that a clear
distinction is called for between joining a party who ought to have been
25 joined as a Defendant and one whose presence before the court is
necessary in order to enable the court effectually and completely
adjudicate upon and settle all questions involved in the suit.*

(Emphasis mine).

*This rule (Order 1 Rule 10(2) of the CPR) is similar to the English R.S.C
Order 16 r. 11 under which the case of *Amon v. Raphael Tuck & Sons
Ltd, (1956) 1 ALLER p. 273*, was considered and decided and in which it
30 was said 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*

5 *order to enable the court effectually and completely adjudicate upon and settle all the questions involved in the cause or matter.”*

Furthermore, as was pointed out by Justice A.N. Karokora, JSC in the same case of *Departed Asian Property Custodian Board vs Jaffer Brothers Limited*
10 (*supra*) the joining of a party to a suit can be tenable for reasons that a proposed party's presence is necessary in order to enable the court effectually and completely adjudicate upon and settle all the questions involved in the cause or matter and not because the plaintiff had any cause of action against them.

In respect of this application, the applicants do state in their affidavit in its support
15 under paragraphs 4 and 5, that the 1st and 2nd respondents in their written statement of defence claim that there is a land title to the suit land in the name of Uganda Land Commission.

That assertion makes this court to deem that it is necessary for the proposed 3rd
20 defendant's to be present to enable this court to determine all the matters of controversy.

Thus given the fact above and taking into account the fact that the respondents did not file any reply to this application to either oppose or rebut the applicant's averments, I would conclude that this application is unchallenged and is meritorious.

25 In making this conclusion, I am fortified by the case of *Massa –Vs- Achen [1978] HCB 297* where it was held, that: -

30 *“where the facts are sworn in an affidavit and these are not denied or rebutted by the opposite party, the presumption is that facts are accepted.”*

Accordingly, I would agree with counsel for the plaintiffs/applicants that the adding the 3rd defendant, who is alleged to hold the certificate of title to the suit

5 land where ownership is under dispute between the parties, the presence of Uganda Land Commission would, as have provided by Order 1 Rule 10(2) of the Civil Procedure Rules, be deemed necessary in enabling this court to successfully and completely to adjudicate upon and settle all the questions involved in the head suit. This issue is thus answered in the positive.

10 b) Issue two: What remedies are available to the parties?

From the conclusions in issue (1) above, and in consideration of the entirety of this application, the affidavit in its support deposed by the applicants, the authorities cited which are all relied on by this court in making its analysis, I would conclude that this application has merits and as such it would be judicious
15 to allow it. I would thus accordingly, allow it as a remedy.

Furthermore, as a consequence of allowing this application, the provisions of Order 1 Rule 10 (4) of the Civil Procedure Rules would become applicable wherein it is provided that “*where a defendant is added or substituted, the plaintiff shall, unless the court otherwise directs, be amended in such manner as may
20 be necessary, and amended copies of the summons and of the plaint shall be served on the new defendant, and, if the court thinks fit, on the original defendants.*”

Therefore, the applicants/ plaintiffs are hereby directed to amend the plaint in Civil Suit No. 12 of 2020 to reflect the court’s position allowing the joining of
25 Uganda Land Commission as a party to the suit within thirty (30) days from the date hereof after which normal process of extracting summons and the serving of all the defendants would ensue.

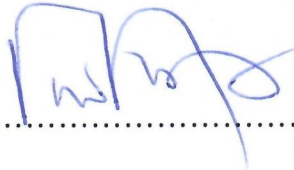
4) Orders:

- This application is found to have merit and is thus allowed.
- 30 - the applicants/ plaintiffs are hereby directed to amend the plaint in Civil Suit No. 12 of 2020 adding Uganda Land Commission as a party to the suit

5 within thirty (30) days from the date hereof, after which normal process of
 extracting summons and the serving of all the defendants would ensue.

- The costs of this application to abide the cause.

I so order

A handwritten signature in blue ink, appearing to be 'H.P. Adonyo', is written over a horizontal dotted line.

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Hon. Justice Dr Henry Peter Adonyo

Judge

28th February 2023

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