THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(CIVIL DIVISION)

MISCELLANEOUS APPLICATION NO.193 & 231 OF 2022

(Arising from Civil Suit No.103 of 2010, Misc. App No. 1445 of 2013, Misc. App No.23 of 2018 and Misc.App.No.2028 of 2018)

1. **NABUKENYA SARAH**
2. **MUKASA MANSOOR**
3. **MUKASA HUSSEIN**
4. **MUKASA BASHIR …… APPLICANTS**
5. **NAMATOVU NULIAT**
6. **NAMUKASA ZAITUN**
7. **NAMUKASA RASHIDA**

VERSUS

1. **SULAIMAN MUKASA & SONS LTD**
2. **KARUKORO RANCH LTD ……RESPONDENTS**
3. **PETER KATUTSI**

AND

SULAIMAN MAYANJA ……..APPLICANT

VERSUS

1. **SULAIMAN MUKASA &SONS LTD**
2. **PETER KATUTSI …….. RESPONDENTS**

BEFORE HON. JUSTICE SSEKAANA MUSA

RULING

The Applicants brought the 1st Application by Notice of Motion against the respondents under Order 1 r.10 (2) and Order 52 r. 1 of the Civil Procedure Rules S.I 71-1 and Section 98 of the Civil Procedure Act Cap 71 and Section 33 of the Judicature Act Cap 13 seeking for orders that;

1. *The Applicants be added as Applicants in CIVIL SUIT [ORIGINATING SUMMONS] NO.022 OF 2022 (Arising from Civil Suit No.103 of 2010, Misc. App No. 1445 of 2013, Misc. App No.23 of 2018 and Misc.App.No.2028 of 2018).*

2. *Costs to be provided for.*

The 2nd Application was brought under the same laws seeking the following orders;

1. *That the Applicant in Miscellaneous Application No. 231 of 2022 be added as a defendant in CIVIL SUIT [ORIGINATING SUMMONS] NO.022 OF 2022 (Arising from Civil Suit No.103 of 2010, Misc. App No. 1445 of 2013, Misc. App No.23 of 2018 and Misc.App.No.2028 of 2018).*

2. *Costs to be provided for.*

The grounds in support of the 1st Application are set out in the Notice of Motion and affidavits of the Applicants dated 15th day of April 2022 which briefly they are;

1. That Applicants are biological children (Sons & daughters) and beneficiaries under the estate of HAJ MUKASA SULAIMAN (deceased) and HAJAT NALUBEGA REHEMA (deceased) both of whom owned 50% and 30% respectively in M/S SULAIMAN MUKASA & SONS LTD (1st Respondent), which form a total of 80% of the impending compensation to the 1st Respondent, but were fraudulently and oppressively excluded from the process of negotiating the alleged Deed of settlement.

2. That the alleged deed of settlement was executed between the only surviving shareholder who owns only 20% to the exclusion of the other 19 beneficiaries who are entitled to 27 and 1/2% of the estate of the deceased.

3. That the current company secretary and the law firm representing the first respondent company were never authorised by the beneficiaries.

4. That there is need to add the applicants to the suit and to amend the pleadings to allow for better interrogation of the issues in controversy.

5. That the addition of the applicants to the suit ought to be allowed because the respondents shall not suffer any injustice.

6. That it would be in the interest of justice that the applicants be allowed and be given an opportunity to be heard on the illegality of the alleged deed of settlement which the 1st Respondent seeks to enforce CIVIL SUIT [ORIGINATING SUMMONS] NO.022 OF 2022 (Arising from Civil Suit No.103 of 2010, Misc. App No. 1445 of 2013, Misc. App No.23 of 2018 and Misc.App.No.2028 of 2018).

The grounds in support of the 2nd Application are set out in the Notice of Motion and affidavit of the Applicant dated 22nd day of April 2022 which briefly they are;

1. That the Applicant is the company secretary of the 1st Respondent who is the plaintiff in Originating Summons No. 02 of 2022.

2. That the issues in the main suit can only best be determined upon giving the Applicant an opportunity to be heard since he has interest in the 1st Respondent Company as a Director as well as a Secretary.

3. That the main suit Originating Summons No.02 0f 2020 was brought by someone who had no locus to represent the company and is not

the company Secretary of M/S Sulaiman Mukasa & Sons Company Limited.

4. That the Originating Summons No.02 0f 2020 is not in the best interest of the 1st Respondent Company.

5. That the addition of the Applicant in the main suit will help to avoid abuse of court process and multiplicity of suits over the same subject.

6. That it is in the interest of Justice that this application be allowed.

The 1st Respondent in both Applications filed affidavits in reply deponed by Frank Kanduho opposing both Applications. Together they briefly stated that;

1. Frank Kanduho is the company secretary of the 1st Respondent and is familiar with the facts of the applications, the main suits and various factors relating to it.

2. That the applicants are strangers to the 1st Respondent Company and they do not have any interest in CIVIL SUIT [ORIGINATING SUMMONS] NO.02 OF 2020.

3. That the Applicants are not parties to the Deed of Settlement executed between the respondents.

4. The main suit seeks to recover funds belonging to the company being wrongfully and fraudulently held by the third respondent in Miscellaneous Application No. 193 of 2022 and second Respondent in Miscellaneous Application No. 231 of 2022 and the suit has nothing to do with the distribution or application of the said funds.

5. The company has no members or officers known as beneficiaries which the applicants claim to be.

6. That the applications are baseless with no reasonable chance of success and it is a mere abuse of court process since the Applicants in fact do not have any rights or interests in Civil suit [OS] No. 02 of 2020.

The Applicants in the 1st Application were represented by *Kenneth Gideon Munungu* holding brief for *David Mushabe* of M/s Mushabe Advocates and the 1st Respondent in both Applications was represented by *Paul Kuteesa* of M/s Arcadia Advocates. The Applicant in 2nd Application was represented by *Banadda Lawrence* of M/s Birungi & Co. Advocates.

It was agreed that the matters proceed by way of written submissions, which were duly filed by both counsel and have been considered.

The main and only issue for determination in both Applications is:

Whether it is necessary and proper to add the applicants as parties to Civil Suit [Originating Summons] No. 02 of 2022?

The Applicants in the 1st Application, biological children (sons and daughters) and beneficiaries of the estate of the Late Haj Mukasa Sulaiman and the late Hajat Nalubega Rehema who owned 80% of the impending compensation of Ugx. 2,700,706,000/= to the 1st Respondent sought to be added as parties to Civil Suit [Originating Summons] No. 02 of 2022 contending that decision arising there from would potentially affect their entitlements under their late father's estate.

Counsel for both Applicants argued that the real question of controversy is whether the applicants would be prejudiced if the Deed of Settlement was left to stand and the compensation paid to the 1st Respondent.

Counsel argued that the Applicants in Miscellaneous Application No. 193 of 2022 objected to the deed of settlement because of the contradiction in amounts in paragraph 5 which reflected Uganda shillings two billion seven

hundred million seven hundred six thousand (2,700,706,000/=) and paragraph 13 which reflected Uganda shillings one billion seven hundred thirty seven million seven hundred six thousand (1,737,706,000/=).

Further that the respondents would block the 1st Applicants from these proceedings under the disguise of being a company matter which ought not to be mixed with succession matters which was not the case since the applicants were not the case since the applicants were not seeking to select an heir, letters of administration, divorce or incompatible blood groups but rather property rights in the Uganda shillings two billion seven hundred million seven hundred six thousand.

The Applicant in Miscellaneous Application No. 231 of 2022 is a biological son and beneficiary of the estate of the Late Haj Mukasa Sulaiman who was the majority in the 1st Respondent Company. The applicant is also a Director and company Secretary in the same company.

Counsel for Applicant in the 1st Application submitted that the Applicant is directly affected by the orders sought in the main suit / originating Summons if he is not joined to the suit in which he is not only a secretary to the 1st Respondent company but also a director as well as a beneficiary who is yet to have his shares transmitted to him. That he seeks to protect the interests of both the Respondent Company and its beneficiaries, him inclusive in his own capacity as a Director as well as a secretary.

The respondents counsel however submitted that the Applicants are strangers to the first respondent company and did not have any interests in the Civil suit [OS] No. 002 of 2020. That the Applicants are not party to the Deed Settlement executed between the Respondents and which is the subject matter of this suit. Counsel also argued that the Applicants are neither shareholders nor part of the first Respondent Company and did not have any right to question the contents of the agreement lawfully entered into by the first Respondent and third Respondent.

Analysis

The court is empowered under Order 1 rule 1 of the Civil Procedure Rules S.I 71-1 to join parties who may have a claim or relief on the subject matter under issue.

Order 1 rule 10(2) of the Civil Procedure Rules S.I 71-1 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 make the court effectually and completely adjudicate upon and settle all questions involved in the suit, be added'.*

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 that 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.

For a party to be joined on ground that their 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 suits, or that that person could not effectually set up a desired defence unless that person was joined or an order made that would bind that other person **(Departed Asians Property Custodian Board vs. Jaffer brothers Ltd [1999] 1. E.A 55).**

Under section 33 of The Judicature Act Cap 13, court has powers to grant remedies so that as far as possible all matters in controversy between the parties are completely and finally determined and all multiplicities of legal proceedings concerning any of the matters is avoided.

In the instant case, the Applicants in the 1st Application seek to be joined as plaintiffs and the Applicant in the 2nd Application seeks to be joined as defendant in the main suit where the Respondents seek to be remitted with all the proceeds of the judgment due to them from the counsel which remittance has never been made.

The Applicants in the 1st Application seek to be joined because they are biological children (sons & daughters) and beneficiaries of the estate of Haj Mukasa Sulaiman and Hajat Nalubega Rehema (both deceased) who owned 80% shares in the first defendant company. And the Applicant in the 2nd Application seeks to be joined because he is the biological son and beneficiary of the estate of Haj Mukasa Sulaiman in the first defendant company as well as its Secretary (allegedly) and Director. The Applicants were fraudulently and oppressively excluded from the process of negotiating the alleged Deed of settlement.

Section 83 of the Companies Act, 2012, provides that shares or other interest of any member in a company shall be movable property transferrable in a manner provided in the articles of a company.

A share is regarded as an asset, and thus forms part of the deceased estate as part of the assets owned by him or her. The shares owned by the deceased will thus either be administered by the executor of the will or will be administered by the administrator of his or her estate where the deceased has died without leaving a will behind.

Shares can thus be transferred from the deceased estate of a shareholder to his or her beneficiaries however there have to be presented the documents such as a will and grant of probate to the directors to show that a beneficiary is entitled to the shares. However, it would be the proceeds of the sale of the shares that would pass to the beneficiaries, not the shares themselves.

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 present case is about the money that is due to the company which was allegedly not remitted by the counsel who represented the company under the Deed of Settlement. It is after the court making appropriate orders that it will be in position to determine whether the money is due or not, that the company shall determine on how to deal with the money. The present applicants are coming to court out of mistaken belief that the court is going to share out this money once recovered. This is a total misconception and this shall not allow all beneficiaries to join the proceedings simply because they think the persons representing the company in court may 'vanish' with the money.

The main suit (Originating Summons) is not a Company Cause to determine rights of the shareholders in the company but rather a case for recovery of what is due to the company from a third party (Peter Katutsi). This matter should not be changed to what the applicants want it to be

rather they should pursue their rights in appropriate cases duly filed in court. The argument by the applicant that it is intended to avoid multiplicity of suits is misconceived and totally flawed without appreciating the nature of the dispute before this court and it has indeed delayed the determination of the merits of the main cause.

The court does not need the presence of the applicants to determine the dispute between the parties and indeed they would be an excess baggage to the suit and are likely to cause confusion.

In those circumstances, it would be inappropriate to add all the family members or beneficiaries as parties to the suit. They are at liberty to address their grievances before the Registrar of Companies through the administrators of the estates of *Haj Sulaiman Mukasa and Hajjat Nalubega Rehema* and not through the present proceedings.

These applications are hereby dismissed with costs to the 1st respondent.

I so order

SSEKAANA MUSA
JUDGE
31st January 2023