

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA
FAMILY DIVISION
MISCELLANEOUS APPLICATION NO. 0576 OF 2022
(All Arising out of Civil Suit No. 0236 of 2019)

- 1. NAMATOVU MADINA**
- 2. NANSAMBA AIDAH**
- 3. IGA HAMISI ::: APPLICANTS**

VERSUS

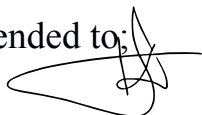
- 1. SEGUYA MUHAMAD**
- 2. MOSES MATOVU**
- 3. ISMA LUBEGA**
- 4. MULUMBA MATHIUS**
- 5. GOODRA TUMUSIIME BEHAKANIRA**
- 6. PETER SSAJJABI**
- 7. MUSA AFEWERK TEKLE**
- 8. COMMISSIONER LAND REGISTRATION :::::::::::::: RESPONDENTS**

Before: Hon Lady Justice Ketrah Kitariisibwa Katunguka.

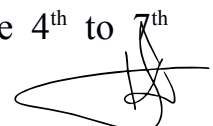
Ruling.

Introduction:

1. Namatovu Madina, Nansamba Aidah and Iga Hamisi (**‘the applicants’** herein); filed CS No. 236 of 2019 against Seguya Muhamad, Moses Matovu, Isma Lubega, Mulumba Mathius, Goodra Tumusiime Behakanira, Peter Ssajjabi, Musa Afewerk Tekle, Commissioner Land Registration (**‘the respondents’** herein); for orders that the plaint be amended to;



2. Strike out the name of Muhamudu Kasozi who was the 2nd Plaintiff and thus co-Administrator of the estate of the late Ausi Matovu who is since deceased; add the Administrator General as a co-defendant because he issued a Certificate of No Objection to the Applicants/Plaintiffs after renouncing the deceased's estate but is currently hobnobbing with the Commissioner Land Registration to circumvent court proceedings; or even apply to become a party to the suit by moving him to cancel all entries made on land comprised in Mailo Register Busiro Block 397 parent Plot 185 fraudulently subdivided into Plots 640-763 at Bweya Estate in Wakiso district; and revert the same to the estate of the late Prince Badru Kakungulu neither a party to the head suit; nor ever owned the suit land or at all; instead of reverting the said land to the estate of the late Ausi Matovu the original registered proprietor;
3. Add Hannington Hakiza, Sarah Birungi Banage, Otwemberere Francis, Magandazi Vincent, Vincent Seguya and Kwesigabo Michael as co-defendants to the head suit, because they are some of the current registered proprietors on the suit land whose presence before this honourable court is very necessary in order for them to explain their actions.
4. Specifically plead particulars of Fraud against each of the Defendants for the wrongs committed by them in concert with each other; and adduce further documentary evidence against each of the Defendants jointly and or severally which is material to the prosecution of this case which the applicant's lawyer Luzige, Lubega Kavuma & Co. Advocates omitted to include at the time of filing the suit; – including the judgment and order of HCCS No. 878 of 1994 Ausi Matovu versus Registrar of titles and Another which declared the suit land as rightfully his with no appeal preferred;
5. Show the illegal and fraudulent conversion of the leasehold interest into a Mailo interest by the 1st, 6th and 8th Respondents without the Express consent, knowledge or approval of the Applicants/Plaintiffs;
6. Show illegal and fraudulent transfers of the Mailo Interest solely by the 1st Respondent/Defendant into the names of his children as well as the 4th to 7th



Defendants without the express consent, knowledge and approval of the Applicants;

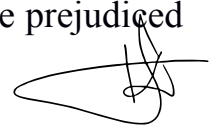
7. The deliberate efforts by the Commissioner Land Registration herein the 8th Respondent to cancel all sub divisions created on the suit land and thereafter illegally and fraudulently revert the suit land to the office of the Administrator General and yet he was at all material times aware of the proceedings in the head suit currently ongoing before this honourable court affecting the same estate in which he is also party.

They pray that costs of this application be provided for.

8. The grounds of the Application are contained in the Notice of Motion and Affidavit in Support deposed by Yiga Hamisi (herein called the Applicant) and briefly are that; on the 21st August 2019 the Plaintiffs filed the head suit in this court against the Defendants jointly and or severally in which only the 1st, 2nd, 3rd and 7th defendants filed their respective written statements of Defence; that in the said suit the Applicant's former lawyer of Luzige Lubega, Kavuma & Co. Advocates omitted to include and or specifically plead fraud against the defendants at the time of filing the suit to wit; the judgment and order in civil suit No. 878 of 1994 Ausi Matovu vs Registrar of titles & Anor which judgment declared the late Ausi Matovu as the undisputed rightful owner of the suit land;

9. Further, that the previous counsel omitted to include; the illegal and fraudulent conversion of the leasehold interest into Mailo interest by the 1st 6th and 8th respondents without the consent of the Applicants/Plaintiffs as Administrators, the sequential sale of the suit land to the 6th and 7th Respondents/Defendants without the express consent of the Applicants/Plaintiffs, the illegal and purported transactions by the 3rd Respondent/Defendant of deliberate efforts of the 8th Respondent to cancel all sub-divisions created on the suit land back to the office of the Administrator General; it is imperative that the Applicants/Plaintiffs specifically plead the foregoing above to enable the court to effectually and completely adjudicate upon and settle all questions;

10. The Respondents/Defendants who individually and or jointly with each other precipitated the above actions unto the Applicants/plaintiffs shall not be prejudiced



by the intended amendment mandated by law for the ends of justice to be served; the inadvertence and or mistake counsel should not be visited on the innocent and illiterate Applicants who should not be visited on the innocent and illiterate Applicants who should not be condemned unheard on their intended amendment of the Plaint; it is under these circumstances and in the interest of justice that the application be granted for justice to prevail;

11. The Application is supported by the following; a certified true copy of minutes by the Administrator General preceding issuance of Certificate of No Objection in respect of the deceased's estate dated 31st/1/2006, a copy of Certificate of No Objection dated 31/1/2006, a copy of Administrator General's Letter dated 21/2/2020, a copy of Commissioner for Land Registration Notices to effect changes in the Register dated 16/8/2021, 17/6/2021, summons to appear for Public Hearing dated 9/2/2021 and 25/3/2021, certified true copies of judgment and Decree, a copy of a Mailo Certificate of Title, Lease agreement dated 19/5/1969, leasehold Certificates of Title for LRV 719 Folio 16 Plot 185 Busiro Block 397 issued on 2/6/1969, certified true copy of Death certificate dated 19/10/2015, Power of Attorney dated 20/2/2005;
12. Letters of Administration dated 21/2/2005, Caveat lodged by the Indian lessees on demised land dated 7/5/1998, Transfer of leasehold interest dated 5/12/2011 by the purported Indian Lessees to the 6th Respondent, 6th Respondent's lawyer letter dated 19/3/2012, purported caveat dated 2/8/2013 by a one Hannington Hakiza over the suit land, purported Transfer form for Plot 742 sub divided from the Parent plot 185 by the 6th Respondent to 7th Respondent without the express consent, knowledge or approval of the Applicants/Plaintiffs as Administrators to the estate of the late Ausi Matovu or at all, purported transfer forms for Plots 643 and 668 sub divided from the parent Plot 185 by the 2nd Respondent to the various persons including the 6th and 7th Respondent without express consent, knowledge or approval of the Applicants as administrators to the estate of the late Ausi Matovu or all;
13. Area Schedule and respective search statements, a copy of the purported power of attorney dated 20/2/2005, Statutory declaration dated 7/2/2006, seeking a special Certificate of title to the suit land, a forged purported Special Certificate of Title

for parent Plot 185 allegedly transferred by the Applicants/Plaintiffs to the 2nd Respondent/defendant, purported transfer of Plot 695 sub-divided from the parent Plot 185 by the 2nd Respondent to a one Yiga Steven without the express consent or approval of the Applicants/Plaintiffs as Administrators to the estate of the late Ausi Matovu or at all, the subsequent purported Transfer of Plot 695 sub divided from the parent plot 185 by 2nd Respondent to a one Mulumba Mathias to the 5th Respondent, copies of Letters dated 28/1/2008 as well as 17/3/2020.

14. The Application is opposed by Muse Afewerk Tekle (herein the 7th Respondent) who filed an affidavit in reply and contended that; the Application is vexatious, misconceived and an abuse of court process as it seeks to amend a plaint of a suit which is already statute barred, which makes it expressly and implied prohibited by the law; if this Application is granted it will be an injustice to him as this Application seeks to defeat his defence of not disclosing a cause of action against him; this application seeks to defeat the Respondent's defence of the statutory bar in the Limitation Act Cap 80; if the amendment is allowed, it shall work an injustice to him as it will lead to multiplicity of suits; that whatever he has stated herein is true to the best of his knowledge and belief.

Representation;

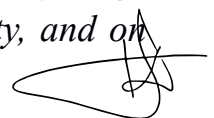
15. The Applicant was represented by Counsel Kiingi Eric and the Counsel for the 7th Respondent is Moses Mugimba; however, both filed written submissions on court record.

Other than the 1st, 2nd and 3rd Respondents who told court that they do not oppose the Application; the 4th 5th and 6th Respondents are deemed to have conceded to the application. (See: **Massa V Achen [1978] HCB 279**). I shall determine the application as against the 7th Respondent.

The question for determination of court is whether the Applicants should be granted leave to amend the plaint in Civil Suit No.236 of 2019?

Determination.

16. Striking off and addition of parties to a suit is provided for under **Order 1 rule 10(2) of the Civil Procedure Rules** which states 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, 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.”

17. **Order 6 Rule 19 of the Civil Procedure Rules** provides that the court may, at any stage of the proceedings, 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.

18. Court in **Nakazi Margret v. Kato James & Anor High Court Miscellaneous Application No.134/2017** held that *“The aim of such applications, like the instant one, is to bring on record all persons who are parties relating to the subject matter before court so that the dispute may be determined in their presence and that the same time without any frustrations, inconvenience and to avoid multiplicity of proceedings.”*

19. The applicants in this case seek the striking off of the 2nd plaintiff (Kasozi Muhamudu) in the main suit HCCS No.236 of 2019; because he is reported to be deceased; the record shows that letters of administration vide High Court Administration Cause No. 146 of 2006 to the estate of the late Matovu Ausi were on 21/2/2006 issued to; Namatovu Madina, Nansubuga Aidah, Mohamad Seguya and Kasozi Mohamood; there is a copy of a death certificate indicating that Kasozi Mohamood died on 6/7/2020. In the letters of administration, Kasozi Mohamood is stated to be a son to the late Ausi Matovu; in the plaint, the 2nd plaintiff under paragraph 1, is stated to be amongst the children and administrators to the estate of the late Matovu Ausi;

20. This difference in the names of the 2nd plaintiff was not verified by the applicants nor their counsel; in my analysis, there is lack of credible explanation on record to prove that the Kasozi Mohamood reflected on the death certificate and letters of administration is the same person as Kasozi Muhamudu; therefore, the striking off of the 2nd plaintiff from the plaint is not sustained.



21. **Order 1 rule 3 of the Civil Procedure Rules**; entitles the plaintiff to join as defendants 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.
22. Amendment aids in the determination of a matter and its attendant ripples; Addition of parties to clarify the genesis of a dispute should not be denied; In **Eastern Bakery -v- Castelino [1958] 1 EA 461**; it was held that: *“It will be sufficient, for purposes of the present case, to say that amendments to pleadings sought before the hearing should be freely allowed, if they can be made without injustice to the other side, and that there is no injustice if the other side can be compensated by costs”*.
23. In this case, the 7th Respondent submits that if the amendment is allowed he shall be denied his defence of limitation and that the plaint does not disclose a cause of action against him; counsel for the Applicant charges that what the 7th Respondent is claiming has already been addressed in the reply to the written statement of defence.

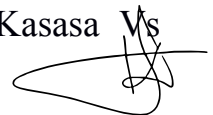
The 7th Respondent contends that he has a defence that will be thwarted if the amendment is granted - the defence of no cause to answer.

24. I have looked at the Plaint particularly at paragraph 4 (f) “part of the estate property comprised in Block 397 Plot 695 was transferred into the names of the 5th defendant without the consent of beneficiaries who in turn transferred the same into the names of the 6th Defendant who also transferred to the 7th Defendant. Paragraph 5 reads, ‘The Plaintiffs shall aver that the acts of the Defendants in sharing the estate of late Ausi Matovu was illegal and fraudulent. According to paragraph (Iv) the plaintiffs particularize the illegality and fraud committed by the defendants and contend that; “By the Defendants with actual or imputed knowledge transferring the estate land into their names without consulting the beneficiaries.”(emphasis applied).

25. Under paragraph 6, it is stated that the Plaintiffs discovered the illegal transactions around 2015...most of the titles are now registered in the names of 6th and 7th defendants. Paragraph 7 states that as a result of the Defendant's conduct, the Plaintiffs together with other beneficiaries of the late Ausi Matovu have suffered a lot of inconveniences, loss and damages.
26. In the plaint, the Plaintiffs pray for judgment to be entered against the Defendants for a declaration that the 1st defendant caused procurement of letters of administration in respect of the estate of the late Ausi Matovu through fraud; a declaration that all dealings and transfers of the deceased's properties formerly comprised in Busiro Block No. 397 Plot 185 and Block 397 – 399 formerly Plot 126 at Bweya Wakiso District were illegal and fraudulent. An order nullifying all subdivisions and transfers that were made on the deceased's properties.
27. A plaint is said to disclose a cause of action when it states "every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the Court (see *Read v Brown (1888) 22 QBD 128 at 131 and Central Electricity Generating Board v Halifax Corporation [1963] AC 785, at 800, 806*). One has to look at the plaint and its annexures to determine whether there exists a cause of action. The Plaintiff must have a claim which he believes was infringed upon and that the Defendant is liable (See: **Tororo Cement Co. Ltd vs Frokina International Ltd; Civil Appeal No. 21 of 2001**).
28. In the instant case, the plaint shows that the plaintiff as beneficiaries to the estate of the late Ausi Matovu have a claim against the defendants whom they accuse of fraudulently and illegally disposing of estate land without the consent of the beneficiaries; I find that a cause of action is disclosed in the plaint; so the objection based on the failure to disclose a cause of action is disallowed.
29. Concerning the contention that if the amendment is allowed it shall deny the 7th Defendant's defence of limitation. Counsel contends that since Letters of Administration for the suit estate were granted in 2006. That this suit having been filed in 2019, is barred under section 20 of the Limitation Act Cap. 80 and therefore, the title was extinguished under section 16 of the said Act; counsel cites Makula International Ltd versus His Eminence Cardinal Nsubuga & Anor CA No. 4 of 1981 UGSC 2; Emily Rose Hilton V Sutton Steam Laundry (Afirm) (1945) 2

All E.R 425 at page 428; where Lord Greene MR held; “it is very well settled that the court does not allow any amendments where the effect of doing so would be to deprive a defendant of any defence open to him under a Statutory limitations.”

30. **Section 20 of the Limitation Act** provides that; *“Subject to section 19(1), no action in respect of any claim to the personal estate of a deceased person or to any share or interest in such estate, whether under a will or on intestacy, shall be brought after the expiration of twelve years from the date when the right to receive the share or interest accrued, and no action to recover arrears of interest in respect of any legacy or damages in respect of those arrears shall be brought after the expiration of six years from the date on which the interest became due.”*
31. Actions for claims to or shares in the estate of a deceased person are barred upon expiration of 12 years from the date the action accrued. I have perused the Plaintiff; paragraph 6 states that; the Plaintiffs discovered the illegal transactions around 2015 when they were arrested while cultivating on the estate land; I would therefore hold that this suit having been brought 4 years from the time the alleged actions of the Defendants was discovered, the civil suit is not bared by the statutory law of limitation.
32. Counsel argued that fraud was not pleaded or alluded to in the Plaintiff; he cited Lovell v Lovell [1970] 3 All E.R 721 at 722 where Salmon J held that “I think it would be a wholly wrong exercise of discretion to compel a defendant to kill his own defence by taking a step in the action which would in itself amount to an acknowledgment.”
33. Paragraph 5 of the Plaintiff reproduced above shows that fraud is attributed to the Defendants including the 7th Defendant (Respondent) in this case; I therefore do not agree with Counsel that fraud was neither pleaded nor alluded to;
34. Counsel for the Applicant contends that the former counsel omitted to plead the particulars of fraud attributed to each of the defendants in concert with all of them. Counsel for the 7th Respondent charges that the actions of Counsel commit the client so if he did not lay out the particulars he ought not be allowed to amend for purposes of correcting the anomaly; Counsel cited Mohammad B Kasasa Vs



Jasphar Buyanga Sirari Bwogi CA No. 42/2008 where court held that; A client is bound by the actions of his Counsel. Negligently drafting a plaint; or incompetence in doing the same is not an excuse for a client to escape being bound by his Counsel's actions.

35. I appreciate the case law provided by Counsel for the 7th Respondent; I however would hold that a client who finds out a lawyer has been negligent and seeks to correct the anomaly through amendment of pleadings early in the day like in this case ought not to be penalized; In circumstances where the litigant leaves the pleadings as they are and the matter goes to trial then he cannot be allowed to plead negligence of Counsel; amendments would in my view be denied if they would deny the other party the opportunity to address them; in this case that is not the position.
36. Having found that the intention of amendment is to further clarify the fraud that was bundled up to allow court determine the matter does not in my most considered view prejudice the 7th Defendant and I have not found any injustice to be occasioned on him because in any case he has a right to amend his written statement of defence;
37. I appreciate both Counsel's statement on the principles governing amendments of pleadings as laid out in **Gasu Transport Services (Bus) Ltd v Martin Adala Obene SCCA No. 4 1994**; that the amendment must not work an injustice to the other side.
38. Multiplicity of proceedings should be avoided as far as possible and amendments which avoid multiplicity should be allowed; an Application which is made malafide should not be granted; no amendment should be allowed where it is expressly or impliedly prohibited by law.
39. Having determined the issues as above I would find that no injustice shall be occasioned against the 7th Respondent considering that all the other intended Defendants may be affected by the decision of this court; and both the Administrator General and Commissioner Land Registration may provide information for the determination of matters concerning the suit property/estate



and If anything, it is my view that the amendment shall help avoid multiplicity of suits;

40.I would therefore allow this application under Section 98 of the Civil Procedure Rules and Section 33 of the Judicature Act also for purposes of adding; The Administrator General, Hannington Hakiza, Sarah Birungi Banage, Otwemberere Francis, Magandazi Vincent, Vicent Seguya and Kwesigabo Michael as co-defendants in HCCS No.236 of 2019; and for bringing out the gist of the dispute.

The application is allowed with the following orders:

1. The application is granted.
2. The applicants shall serve the amended plaint on all the defendants together with the summons to file their defence.;
3. The costs shall stay in the suit.



Ketrach Kitariisibwa Katunguka

Judge

3/07/2023.

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