

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**LAND DIVISION**  
**MISCELLANEOUS APPLICATION NO. 717 OF 2012**

*Arising From Civil Suit No.226 /2011*

**MUHUMUZA HILLARY.....APPLICANT**

**VERSUS**

- 1. WENSI NUWAGABA JOHNSTONE**
- 2. HON. AWONGO AHMED.....RESPONDENTS**

**BEFORE HON. LADY JUSTICE PERCY NIGHT TUHAISE**

**RULING**

This was an application by chamber summons brought under section 98 of the Civil Procedure Act and Orders 1 rule 13, Order 6 rules 19 & 31 of the Civil Procedure Rules (CPR) for orders that:-

- (a) The 2<sup>nd</sup> respondent be made party to civil suit no. 226 of 2011 and miscellaneous application no. 404 of 2011 as the 2<sup>nd</sup> defendant and respondent respectively.
- (b) Leave to amend civil suit no. 226 of 2011 and miscellaneous application no. 404 of 2011 be granted to reflect the plaintiff's claim against the 2<sup>nd</sup> defendant/respondent.
- (c) Provisions be made for costs of this application.

The application is supported by two affidavits of **Muhumuza Hillary** the applicant and is based on the grounds that:-

- a) The 2<sup>nd</sup> respondent illegally purchased the suit property in utter contempt of the interim order in respect of the suit property by this honourable court dated 24/06/2011.
- b) The 2<sup>nd</sup> respondent further illegally evicted the applicant from the suit property in utter contempt of the said court order.
- c) The 2<sup>nd</sup> respondent went ahead in utter breach of the said court order tried to register himself on the certificate of title of the suit land but for the existence of the said court order as an encumbrance.
- d) The 2<sup>nd</sup> respondent was at all material times prior to the above mentioned illegal actions had notice and was aware of the applicant's interest in the suit land and the existence of the said court order.

- e) That it is in the interests of justice and for the above illegal actions of the 2<sup>nd</sup> respondent against the plaintiff that give rise to a cause of action and that the 2<sup>nd</sup> respondent be added as a 2<sup>nd</sup> defendant in civil suit no. 226 of 2011 and leave be granted to amend the same to reflect the applicant's cause of action against the 2<sup>nd</sup> respondent as a 2<sup>nd</sup> defendant accordingly.
- f) The balance of convenience is in favour of the applicant and the respondents will not be inconvenienced in any way if this application is granted.
- g) That it is just and equitable that this injunction be granted.

The respondents did not file any affidavits in reply but they were served through their Counsel who endorsed on the hearing notice as per the affidavit of service deposed to by a one Wabwire Charles a court process server in the applicant's Counsel's chambers. When this matter was called for hearing, the respondents and their Counsel were not in court and the matter proceeded *ex parte*.

I have looked at the application and all affidavits on this matter, including the pleadings in civil suit no. civil suit no. 226/2011. I have also analysed the submissions of Counsel and the law applicable to the situation.

The affidavit evidence of the applicant is that the 2<sup>nd</sup> respondent illegally purchased the suit property in utter contempt of this court's interim order dated 24/06/2011. It is the applicant's evidence that the 2<sup>nd</sup> respondent further illegally evicted the applicant from the suit property, that he tried to register himself on the certificate of title of the suit land, and that he at all material times had notice and was aware of the applicant's interest in the suit land and the existence of the court order. Counsel for the applicant submitted that it is just and equitable for court to grant the applicant's prayers in order to determine the issues in controversy.

Order 1 rule 3 of the CPR provides as follows:-

***“All persons may be joined 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 questions of law or fact would arise.”***

The applicant's affidavit evidence highlighted above has not been rebutted by the respondents. The 2<sup>nd</sup> respondent's stated acts of purchasing and defying court orders are in respect of the same suit land for which the applicant initially filed civil suit no. 226 of 2011 against the 1<sup>st</sup> respondent. The applicant claims a right of relief against the 2<sup>nd</sup> respondent on the same suit land that is the subject of civil suit no. 226 of 2011. If a separate suit was brought by the applicant against the 2<sup>nd</sup> respondent in respect of the same suit property, common questions of law and fact would arise. Addressing such suits separately would lead to multiplicity of suits. I find it necessary that the 2<sup>nd</sup> respondent be joined as a co defendant in civil suit no. 226 of 2011 so that

all questions arising out of the dispute can be resolved at once. The 2<sup>nd</sup> respondent could rightly be joined as a co defendant in civil suit no. 226 of 2011 under Order 1 rule 3 of the CPR.

In the premises, and on the foregoing authorities, I would allow this application. The 2<sup>nd</sup> respondent is to be joined as a co defendant in civil suit no. 226 of 2011. The plaint should be amended accordingly and served on the 2<sup>nd</sup> respondent as co defendant in civil suit no. 226 of 2011 so that he files a defence within the required time.

The costs of this application will be in the cause.

**Dated at Kampala** this 25<sup>th</sup> day of March 2013.

Percy Night Tuhaise.

**JUDGE.**