THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

[LAND DIVISION]

MISCELLANEOUS APPLICATION NO.1784 OF 2019

ARISING FROM CIVIL SUIT NO.342 OF 2016

YAHAYA WALUSIMBI::APPLICANT

VERSUS

1. JUSTINE NAKALANZI
2. LEVI LUYOMBYA
3. RUTH NAMUSISI
4. ROBINSON ABRAHAM KITENDA::::::::::::::::::::::::::::::::RESPONDENTS
5. JOSEPH MUKASA
6. ELLY KAYANJA
7. FULGENCE KALIBBALA
8. GEORGE SSEMPIJJA
9. THE REGISTRAR OF TITLES

BEFORE: HON. MR. JUSTICE HENRY I. KAWESA

RULING

This application was brought by notice of motion under Section 98 of the Civil Procedure Act Cap 71, O.1 r3 of the Civil Procedure Rules S.I 71-1 seeking for orders that:

1. The Applicant be added as a Defendant in Civil No. 342 of 2016.

2. The costs of the application be provided for.

The grounds upon which the application shall be referred to in this ruling. The brief background of the application is: in 1999 a one Jackson Musoke Kikayira, on behalf of the estate of the late Erisa

Musoke, instituted Civil Suit No.199 of 1999 against a one Nalubega Rosemary and the Applicant. In that suit, the Plaintiff claimed that the subdivision of land in Kibuga Block 5 plot 584 into plots 1120 and 1121 was fraudulent. After the trial, that suit was determined in the Plaintiff's favour and, consequently, orders of cancellation of title and rectification of the register were issued.

In 2016, again the 1st—5th respondents, vide Civil Suit No.342 of 2016 sued the 6th—9th respondents claiming fraudulent misrepresentation that they owned the same land, that is: land comprised ***Kibuga Block 5 plot 584 at Karerwe*** *(hereinafter the suit land).* A one Nalubega Rosemary was, originally, not a Defendant to the suit but was added thereto under O.1 r10 & 13 of the Civil Procedure Rules vide H.C.M.A. No.675 of 2016, an application she brought.

In 2019, the Applicant also instituted Civil Suit No.808 of 2019 against the administrators of the estate of the late Erisa Musoke, the 1st—4th respondents in respect of the same land. In his suit, he claims as a bonafide purchaser of part of the suit land, plot 1120, despite the judgment in Civil Suit No.199 of 1999. The root of his claim is that that judgment is null and void for being obtained on an allegedly forged sale agreement. His suit is yet to be heard.

The Applicant has also brought this application seeking to be joined as a Defendant in Civil Suit No.342 of 2016. The basis for the application is that the judgment in that suit will affect him yet he has high chances of success to recover his land. He explains that

the joinder will enable him file a written statement of defence to defend himself against the 1st-5th respondents' claim of the suit land; counterclaim against all the respondents and Nalubega Rosemary for their transactions on the suit land; and seek the setting aside of the judgment in H.C.C.S No.119 of 1999, among others.

The application is supported by the Applicant's affidavit and opposed by the 1st—5th respondents through a reply deponed by the 2nd respondent to which the Applicant rejoined.

Counsel for the Applicant and the 1st—5th respondents (hereinafter the respondents) filed written submissions. I shall consider them in the determination of the application.

In his submissions, Counsel for the respondents proposed 4 issues. I shall not adopt these issues because, in my view, they will not lead court to the effectual resolution of the application. However, before I can go any further, one thing is worth a comment, that is: the respondents' Counsel queried the fact that this application was brought under O.1 r.3 of the Civil Procedure Rules. Arguably, the right law ought to be O.1 r10(2) of the Civil Procedure Rules. Counsel for the Applicant appears to admit this in his submission, since he refers to O.1 r10(2) instead of O.1 r.3 of the Civil Procedure Rules.

Now Counsel for the Respondents wants court to dismiss this application on ground that it was brought under wrong law. He added that the citation of Section 98 of the Civil Procedure Act Cap 71, in the application cannot also be called in aid, because it applies only in situations where there is no specific law.

Truly, Section 98 of the Civil Procedure Rules only applies where there is no specific law providing for a set of circumstances. It appears to me, though, that the citation of O.1 r.3 instead of O.1 r10(2) of the Civil Procedure Rules**,** was a mistake of Counsel for the Applicant since he later capitulates to the right law in his submissions. It would, thus, in my view, be unfair if this is visited on the Applicant and consequently dismiss his application.

Additionally, since both parties have addressed court on the merits of the application, I think, it is just safe to consider the wrong citation as a curable irregularity and proceed with the application. Section 98 of the Civil Procedure Rules., in the application, was, therefore, not cited in vain.

The issue below is proposed for resolution:

Whether the Applicant ought to be joined as a Defendant to Civil Suit No.342 of 2016

It is important to recall the purpose of joinder of parties. According to ***Samson Sempasa versus P.K. Sengendo H.C.M.A No.577 of 2013***, a case cited by Counsel for the Applicant, 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. This purpose derives its origin from O.1 r10(2) of the Civil Procedure Rules, which has been properly referred to by both Counsel in their submissions.

According to the provision thereunder, the Court may at any stage of the proceedings order the addition of *"the name of any….person….whose presence before Court may be necessary in order to enable the Court to effectually and completely to adjudicate upon and settle all questions involved in the suit…".* The application of these provision has duly been considered by the *Supreme Court* in ***DAPCB versus Jaffer Brothers Ltd SCCA No.9 of 1998*.**

According to the court in that case, before an Applicant may be joined to a suit, he or she must satisfy one of the following requirements; that is:

[1] That the orders sought by the Plaintiff in the main suit would directly or legally affect the party seeking to be added and,

[2] That the person qualifies, (on application of the Defendant) to be joined as a co-Defendant, because the Defendants cannot effectively set up a desired defence unless that person is joined or unless the order to be made would bind that person.

I have carefully appreciated the averments in the Applicant's affidavits. In these, he avers that the orders in Civil Suit No.342 of 2016 will affect his interest in the suit land, part of which he claims, which makes his joinder necessary.

The Applicant gave reasons how orders of that suit will affect him and why it is necessary to have him joined as a Defendant in that suit. One of these is that because the Plaintiffs in that suit claim the whole suit land, alleging to have bought it from Nalubega Rosemary, yet they knew that the she had no claim over it due to the judgment

vide Civil Suit No.119 of 1999. It was his evidence also that the Plaintiffs therein knew that he had bought part of the suit land from Nalubega Rosemary. Another reason he gave was that, because, the 1st—5th respondents' claim is based on a judgment which he seeks to set aside because it was based on a false sale agreement, that is: dated 22nd March, 1932 yet the vendor therein had died by 26th January, 1924.

According to the respondents' affidavit, the application ought not to be granted. Their reason was that the addition of the Applicant would render their suit against him *res-judicata* in view of the impugned judgment. They further averred that until that judgment is set aside, this Court is barred from resurrecting issues concerning the purchase of the suit land, which may result from the Applicant's joinder. Their Counsel reiterated the same reason in his written submissions, before praying that the application be dismissed on ground that the Applicant had no *locus standi* to bring it before completing the proceedings in H.C.C.S No.808 of 2019.

From the reasons advanced by the Applicant, I failed find how the orders sought in Civil Suit No.342 of 2016 will affect him. Actually, I believed him, at the onset, until I realised it was erroneous! This was after noting that he lacks any interest in the suit land, at this point. The lack of it results from, as the respondents and their Counsel opined, the binding effect of the impugned judgment. I note that it is a judgment in rem. It then means that until it is set aside, the Applicant's claim that he has interest in the suit land is

simply a wishful thought. This is notwithstanding that he may have legitimate grounds for challenging it.

Because the Applicant lacks any interest in the suit land, it is hard for me to believe that any orders that may be made in Civil Suit No.342 of 2016 will directly or legally affect him. Can a court order affect a person without a recognizable interest in property. Of course no!

I now agree with the respondents that the Applicant should have first thought of, and succeeded at, setting aside the impugned judgment before bringing this application. For obvious reasons, I do not doubt him, and his Counsel, for asserting that Section 7 of the Civil Procedure Act Cap 71 does not bar challenging a judgment obtained by fraud. My insistence, however, is that that should have been the first course, and must be completed, before this application!

Counsel for the Applicant argued that the failure to join the Applicant in Civil Suit No.342 of 2016 will occasion a multiplicity of suits. The rationale he gave was that the Applicant will have to challenge any judgment in favour of the Plaintiffs in that suit.

I do not agree with Counsel for the Applicant, much I believe that such a situation can possibly arise. In my view, the multiplicity of suits envisaged under O.1 r10(2), of the Civil Procedure Rules, can only arise when court does not determine in one proceeding, when it could effectually and completely do, more than one dispute

arising from the same transaction or series thereof and concerning the same subject matter. The provision implies a situation, for instance: where if Civil Suit No. 342 of 2016 is decided in favour of the Plaintiffs at this time, the Applicant would come up with another suit concerning the suit land, with a likelihood of being decided differently.

This is not the case here. What the Applicant seeks is exactly the opposite. It would require court to first determine his interest in the suit land— which is by determining the validity of the impugned judgment, one transaction and subject matter— and then settle the controversy of ownership of the suit land, which also arises from another transaction and involves a different subject matter. The failure to handle both at one proceeding, in my view, cannot occasion a multiplicity of suits.

In conclusion, therefore, the Applicant is not a necessary party envisaged under O.1 r10(2) of the Civil Procedure Rules the issue above is thus found in the negative.

Consequently, the application is dismissed with costs to the 1st—4th respondents, who entered appearance.

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Henry I. Kawesa

JUDGE

12/06/2020

12/06/2020:

Mr. Sekajja Uskasha for the Respondent.

Counsel for the Applicant absent.

Parties absent.

Grace – Court clerk.

Court:

Ruling delivered in chambers in the presence above.

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Henry I. Kawesa

JUDGE

12/06/2020