

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(LAND DIVISION)

MISCELLANEOUS APPLICATION NO.1258 OF 2020

(ARISING OUT OF CIVIL SUIT NO.274 OF 2020)

GUARANTY TRUST BANK (U) LTD:..... APPLICANT

VERSUS

1. TEBUSABWA MARGRETE

2. NANTANYI IRENE

3. ZIWA IVAN

4. BUKIRWA WINFRED

5. KYAMBADDE ISAAC

6. NANYONGA FLAVIA

7. SEMANDA JIMMY:.....RESPONDENTS

Before: Lady Justice Alexandra Nkonge.

RULING.

This application was brought under **Section 33 of the Judicature Act Cap 13, Section 98 of the Civil Procedure Act Cap 71 and Order 1 Rule 10 (2) & 13 of the Civil Procedure Rules SI 71-1** for orders that the Guaranty Trust Bank (U) Ltd be added as a party/defendant to **Civil Suit No.274 of 2020** and costs of the application be provided for.

Brief Background:

The 1st, 2nd, 3rd, 4th, 5th, and 6th respondents instituted **Civil Suit No.274 of 2020** (hereinafter referred to as the "head suit") against the 7th respondent for declaration that the land comprised in **Kyadondo Block 206 Plot 1053 land at Mpererwe** and **Kyadondo Block 196 Plot 1725 land at Komamboga** (hereinafter referred to as the "suit land") belongs to the estate of the late Minzulaimu Muzira; orders for cancellation of the title of the suit land; reinstatement of the names of the late Minzulaimu Muzira on the certificates of title in respect of the suit land; an eviction order against the defendant from the suit land; and a permanent injunction restraining the defendant/7th respondent from occupying or trespassing or in any way dealing with the suit land; as well as general damages and costs of the suit.



The plaintiffs in the head suit claimed that the defendant/7th respondent stole the certificates of title in respect of the suit land and got registered as the proprietor thereof through fraud and illegality.

Grounds of the Application:

5 The grounds of the application are contained in the affidavit in support of the application of Mr. Muhwezi Ronald Tharry, the applicant Company's legal officer wherein he stated *inter alia* that: the applicant company, a financial institution advanced a loan facility that was secured by the suit land, to the 7th respondent.

That the applicant's legal mortgage was duly registered as an encumbrance on the suit property.

10 To this end, the applicant attached a loan agreement 29th November 2018 and a copies of the certificates of title of the suit land marked as **Annexure "A"** and **"B"** respectively.

It was further deponed that the 7th respondent has since defaulted on repayment of the said mortgage/loan which has amounted to **Ugx.896, 791,320/= (eight hundred ninety six million seven hundred ninety one thousand three hundred twenty shillings only)** and efforts to

15 enforce the mortgage has been illegally halted by the 7th respondent and police.

That the applicant will suffer gross financial loss and injustice if this court goes on to decide the head suit in favor of any of the respondents without consideration of its rights, and that the addition of the applicant to the suit is necessary to enable this honorable court effectually and completely adjudicate and settle all issues in controversy.

20 Going by the record, none of the respondents filed affidavits in reply of the application though they were served with both the application and directives of this court issued on 29th September, 2020, as per the affidavit of service of Mr. Muhwezi Ronald Tharry.

Accordingly this application is uncontested and I therefore grant it.

Costs in the cause.

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Alexandra Nkonge Rugadya

Judge

25th February, 2021

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