

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA

AT KAMPALA (LAND DIVISION)

MISCELLANEOUS APPLICATION NO 500 OF 2021

(Arising from Civil Suit No. 1075 of 2020)

VASTINA KYALISIMA:.....APPLICANT

VERSUS

JOSEPHINE ABAASA:.....RESPONDENT

Before: Lady Justice Alexandra Nkonge Rugadya

R U L I N G:

Introduction:

This application is brought under Order 1 r.10(2) and Order 4; Order 52 r.1,2 and 3 Civil Procedure Rules(CPR), and Section 98 Civil Procedure Act(CPA) for orders that: -

1. The William Mwesigye be joined as a defendant in **Civil Suit No. 1075 of 2020** and the
plaint, summons be amended and the same be served on him accordingly.
2. The cost of this application be provided.

Grounds of the application:

The grounds of the application are that;

a. The presence of William Mwesigye is necessary in order to enable court to effectually and completely adjudicate upon and settle all questions in the suit and avoid multiplicity of suits.

5 b. The applicant claims ownership of the farm land at Kapeeka which is subject of **Civil Suit No.1075 of 2020** while the respondent alleged in her written statement of defence that same land is owned by her husband William Mwesigye.

10 c. The applicant pleads in the plaint that she contributed the money used by the respondent to purchase the said land and continued to send money to the respondent to look after the animals and paying the workers at the farm.

d. The orders of this court in determination of the ownership of the farm land at Kapeeka shall directly or indirectly affect the said William Mwesigye unheard.

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e. It is just that William Mwesigye be added as a defendant in order to enable him be heard and to substantiate the claims of the claims of ownership of the said land.

The grounds are amplified in the affidavit of Ms Nalika Madinah, an advocate of the applicant. who deposes that as lawyers for the applicant, they filed **Civil Suit No. 1075 of 2020** against
20 the respondent seeking orders *inter alia*; a declaration that the applicant is the lawful owner of the farm land at Kapeeka and that the respondent is a trustee for the applicant in respect of the same land. The copy of the plaint is attached and marked annexure "A".

That in the plaint it is alleged that the respondent used the applicant's money to acquire the same land and that the applicant has been sending money to look after the animals and paying
25 the salaries for the workers. The copies of the correspondents are annexure "B"

That the respondent in her WSD alleges that the farm land at Kapeeka is for her husband William Mwesigye . The copy of the WSD, is annexure "C".



That the determination of the rights and interests of the parties in respect of the farm land at Kapeeka shall directly or indirectly affect William Mwesigye.

That it is a cardinal principle of law that no person is to be condemned un heard which makes it just and necessary that the court orders William Mwesigye to be added as a party in order to enable the court to effectually and completely to adjudicate upon and settle all questions in the suit concerning the ownership of the farm land at Kapeeka.

The presence of William Mwesigye who is alleged by the respondent to be the owner of the suit land is therefore necessary for court to effectually and completely adjudicate upon and settle all questions in the suit and avoid multiplicity of suits.

Consideration of the issue

The issue for determination is whether William Mwesigye can be added as a defendant in **H.C.C.S No. 1075 of 2020** in the circumstances of this case. The joinder of parties to pleadings is governed under **Order 1 r.10 (2) CPR** which 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, 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."[underlined for emphasis].

The procedure for bringing such an application is provided for under **Order 1 r.13 CPR** that;

"Any application to add of strike out or substitute a plaintiff or defendant may be made to the court at any time before trial by mention or summons or at the trial of the suit in summary manner."

Clearly, under **Order1 r.10 (2) (supra)** not only can the parties avail themselves of the provisions of the rule but the court can also 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. v. West Mengo Co-op Union Ltd. [1981] HCB 60.**



The power to add or strike off a party to pleadings therefore lies within the discretion of court which must however be exercised judiciously based on sound principles. See: **Yahaya Kariisa v. Attorney General & A'nor, S.C.C.A. No.7 of 1994 [1997] HCB 29**, The main purpose of joining parties is to enable the court to deal with matter brought before it and to avoid multiplicity of pleadings.

It is a fundamental consideration that before a person can be joined as party, it must be established that the party has high interest in the case. In addition, it must be clearly demonstrated that the orders sought in the main suit would directly or legally affect the party seeking to be added.

These considerations have been amplified by the Supreme Court of Uganda in the case of the **Departed Asians Property Custodian Board v. Jaffer Brothers Ltd [1999] I.E.A 55**, which observed that 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 suit, or that the defendant could not effectually set up a desired defence unless that person was joined or an order made that would bind that other person. See also: **Gokaldas Laximidas Tanna v. Store Rose Muyinza, H.C.C.S No. 7076 of 1987 [1990 - 1991] KALR 21**.

Section 33 of the Judicature Act (Cap.13) stipulates that as far as possible all matters in controversy between the parties should be completely and finally determined and all multiplicities of legal proceedings concerning any of the matters be avoided.

Since it is claimed that the respondent's husband owns the suit land, it would be appropriate and in the interest of justice that all matters touching and concerning the subject matter of the suit in the instant case be determined finally and completely to avoid litigating over the same matters again.

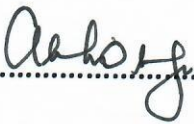
This is therefore a proper case which justifies the order to add William Mwesigye as a party to the main suit, since in any case there was no objection to this application.

Accordingly, the applicant is directed to effect the necessary amendments to the pleadings and to serve the defendants with an amended plaint, within 7 days from the date of delivering this ruling.

The added party is required to serve his WSD within 15 days after receiving the amended plaint; and a rejoinder is to be filed 7 days after receiving the WSD.



No orders made as to costs.


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5 **Alexandra Nkonge Rugadya**

JUDGE

28/01/2022

Delivered by email
Alexandra Nkonge Rugadya
5 28/1/2022