

**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA AT KAMPALA**

**(LAND DIVISION)**

**MISCELLANEOUS APPLICATION NO.2259 OF 2021**

*(Arising out of Civil Suit No.712 of 2021)*

**FREDRICK TWESIME:.....APPLICANT**

**VERSUS**

**1. EMMANUEL SSEKOYONDWA**

**2. SEKATAWA ROGIUS:.....RESPONDENTS**

**Before: Justice Alexandra Nkonge Rugadya.**

**Ruling.**

The applicant brought this application by chamber summons under **Section 33 of the Judicature Act cap. 13, Section 98 of the Civil Procedure Act Cap. 71 and Order 6 rules 19 & 31 of the Civil Procedure Rules SI 71-1** seeking orders that:

- 1. The applicant be granted leave to amend the plaint in Civil Suit No. 712 of 2021;**
- 2. Th applicant be granted leave to add facts and prayers in Civil Suit No.712 of 2021 to bring out the case properly against the defendants;**
- 3. The applicant be granted leave to add the name "Tabura" on the applicant's/plaintiff's name Fredrick Twesime as reflected in the certificate of title of plot 1871 block 331 Busiro;**
- 4. The applicant be granted leave to add the name "Aidan Chwa" on the name of the 2<sup>nd</sup> respondent/2<sup>nd</sup> defendant and the name "Rogius" be dropped from the original plaint**
- 5. Costs of the application be provided for.**

The grounds upon which the application is based are contained in the affidavit in support of **Mr. Fredrick Twesime**, the applicant wherein he states *inter alia* that; he is the registered proprietor of the suit land comprised in **Busiro Block 331 plot 1871 land at Namagoma Wakiso district** and that he instituted the main suit as well as the subsequent applications for interim and temporary injunctions against the respondents jointly and severally for trespass, but before this court issued the temporary injunction, the parties were required to conduct a boundary opening exercise of the plots in dispute.

That the parties contracted the services of **M/s Geo Earth Consult Surveyors** to conduct the exercise after which, it was revealed that all the plots to wit; **plot 1162 & 1163** which overlapped each other, are registered in the names of **Aidan Chwa Ssekatawa** while **plot 1871** is registered in the name of **"Twesiime Fredrick Tabura"**.

That the name "**Tabura**" is not mentioned in the original plaint yet it is reflected in the applicant's certificate of title and the search letter from the land registry while the name "**Aidan Chwa**" is not captured in the original plaint yet it is reflected in the certificate of title for **plot 1162 and 1163** which is registered in the name of the 2<sup>nd</sup> defendant and that the said survey caused several investigations into the originality of plots **1871, 1162 and 1163** in as far as the previous owners are concerned.

In addition that the original plaint is not sufficient to bring out the reliefs the applicant is entitled to with the discovery of the new material facts resulting from the investigations of the originality of the said plots and that it does not constitute the applicant's claim in as far as it does not clearly bring out the facts of the case.

Furthermore, that the amendment sought does not in anyway introduce a new cause of action and that it is sought to put the respondents on notice of the applicant's entire case and also incorporate new facts, which are vital in the determination of the main suit therefore it is necessary for purposes of determining the real issues in controversy.

In reply, the respondents in their respective affidavits in reply vehemently objected to the application on grounds that two preliminary objections to wit; the suit is incompetent because it was filed against a nonexistent party and that it disclosed no cause of action.

On his part, the 1<sup>st</sup> respondent stated that from birth, he has always used the name '**Emmanuel Ssemombwe**' and not **Emmanuel Ssekyondwa** who is listed as the 1<sup>st</sup> respondent therefore, the applicant filed the suit against a wrong party and that for that reason, the applicant's suit is a nullity that cannot be cured by amendment making the plaint invalid.

Further, that after the applicant filed the main suit, a survey of the suit property was conducted and it was found that the applicant/plaintiff's plot of land comprised in **Busiro Block 331 plot 1871 at Namagoma Wakiso** overlaps the land comprised in **Busiro Block 331 plots 1162 and 1163** owned by **Ssekatawa Aidan Chwa**, who the applicant intends to add as a defendant.

In addition, that the applicant not only intends to add the Commissioner for Land Registration as a 3<sup>rd</sup> defendant, but also intends to maintain Emmanuel Ssekyondwa as a defendant and to amend the cause of action against the defendants by including fraud to trespass as a claim

Further, that because the respondents sued a non-existent party in the form of **Ssekatawa Rogius** instead of **Ssekatawa Aidan Chwa**, the suit is nullity that cannot be cured by amendment of the pleadings by simply substituting the party and that because the applicant intends to change the cause of action from fraud to trespass, the amendment of the plaint is prejudicial to the 1<sup>st</sup> respondent because the said amendments not only strip away but also deny the 1<sup>st</sup> respondent, the ability to utilize the defence raised.

That the applicant has not shown anywhere that he is capable or willing to compensate Ssekatawa Rogius in costs for the harm that shall befall the respondents in the event that the application is granted therefore it is in the interest of justice that the instant application seeking the amendment of **Civil Suit No.712 of 2021** be dismissed.

Similarly, the 2<sup>nd</sup> respondent in his affidavit in reply objected to the application on grounds identical to those contained in the affidavit in reply of the 1<sup>st</sup> respondent.



The applicant also filed an affidavit in rejoinder wherein he stated that when he found people constructing on the suit land, he requested for the identity and names of the owners to which the 1<sup>st</sup> respondent suggested '**Ssekatawa Rogius**' and that when the main suit was filed, a one Ssekatawa, the 2<sup>nd</sup> respondent entered appearance but it was later discovered that he had hidden the name

5 '**Aidan Chwa**'

That when the boundary opening exercise was conducted, the 2<sup>nd</sup> respondent known as Sekatawa Aidan Chwa was present and that at all times the parties appeared in court, two gentlemen to wit Sekatawa who claimed to own the suit land and the other who was found at the construction site always entered appearance

10 The applicant further averred that it was also discovered that the land registry had issued 3 (three) certificates of title in respect of **Plots 1162, 1163 & 1871** and that upon discovering the respondent's other names in line with the findings of the survey report as well as the search report, the instant application was imperative

15 Further, that the facts discovered after the boundary opening exercise warrant the amending of the plaint so as to include the new facts, prayers and addition of the Commissioner Land Registration who issued several certificates of title in respect of the same plot of land and that the respondents twisted their names to hide their identities yet the 2<sup>nd</sup> respondent appeared in court and was identified as the owner of the suit land.

20 In addition, that the facts in regards to fraud and trespass are intertwined which causes the cause of action to be joined for court to reach a logical decision since the fraud that marked the creation of several certificates of title needs to be investigated by this court; and it is through the amendment of the pleadings that can best assist this court in reaching a final decision.

**Representation.**

25 The applicant **M/s Kivumbi Madinah Kikomeko Advocates & Solicitors** while the respondents were represented by **M/s J Byamukama & Co. Advocates**. Both counsel filed written submissions in support of their respective client's cases as directed by this court.

**Consideration by Court.**

30 I have carefully read the submissions of both counsel, the details of which are on court record and which I have taken into consideration to determine whether or not the applicant merits the prayers sought.

The prayers sought in this application are three fold:

**1. Correction of a misnomer:**

A misnomer refers to a mistake in naming a person, place or thing in a legal instrument which can be corrected by an amendment to the pleadings.

35 It is now well established that a misnomer can under certain circumstances be rectified by amendment replacing the name appearing on the plaint or Written Statement of Defence with what the parties believe to be the right litigant. The correction is only possible where the misnomer is done out of good faith.

According to the *Black's Law Dictionary (1999), 7th Edition at p. 1015;*

*... A mistake in naming a person, place or thing especially in a legal instrument. In federal pleading - as well as in most states - misnomer of the party can be corrected by an amendment, which will relate back to the date of the original pleading...*

- 5 In *Attorney General vs Sabric Building and Decorating Contractors Ltd MA No.299 of 2012*, it was observed that where a wrong description of a party is a misnomer, it is not fatal, especially if the substance of identities of the parties to the proceedings is not affected.

10 In *Attorney General vs Sanyu Television (1998) CS No. 614 of 1998* court held that a misnomer would be curable under the provisions of *Order 27 rule 10 and Order 1 Rule 10 of the Civil Procedure Rules.*

In the same case, court further observed that a "review of the authorities shows that most cases of misnomer involve misnaming the defendant. Such amendment will ordinarily be made under *Order 1 rule 10.*"

- 15 In the case before this court, although the applicant as plaintiff filed a suit against the respondents describing them by the wrong names to wit: '*Emmanuel Ssekyondwa*' and '*Ssekatawa Rogius*' instead of '*Emmanuel Ssemombwe*' and *Ssekatawa Aidan Chwa*, it is quite clear that this is a misnomer. The substance of identities of the respondents is not affected. It is easy to tell that the application and the main suit refer to the respondents, and no other persons.

- 20 Accordingly the amendment is hereby allowed under *Order 1 rule 10 of the Civil Procedure Rules* to capture the respondents as '*Emmanuel Ssemombwe*' and *Ssekatawa Aidan Chwa*.

2. *Addition of a party:*

The same *Order 1 rule 10(2) of the Civil Procedure Rules SI 71-1*, empowers court at any stage of the proceedings either upon or without the application of either party, to and on such terms as may appear to court to be just, add a person who is not a party as a plaintiff or defendant to the suit.

- 25 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 or is rather likely to be affected by the decision of court. The Supreme Court of Uganda in the case of the *Departed Asians Property Custodian Board v. Jaffer Brothers Ltd [1999] I.E.A 55* observed that for a party to be joined on ground that his presence is necessary for the effective and complete settlement of all questions involved in the suit, it is necessary  
30 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.

- 35 The applicant in this case sought to add the Commissioner, Land Registration as a party to the suit. He alleges in his proposed amended plaint that the respondents fraudulently acquired and subdivided the suit land and further seeks an order of cancellation of the 2<sup>nd</sup> respondent's certificate of title by the Commissioner, land Registration.

A careful consideration of the pleadings, evidence and submissions by counsel indicates that this is a fit and proper case in the view of this court as would justify the addition of the Commissioner, Land Registration as a necessary party, in order to determine all the issues arising from the plaint ranging from whether or not the suit land was fraudulently subdivided and acquired by the respondents.

5 **Amendment of pleadings:**

**Order 6 Rule 19 of the CPR** empowers court to grant leave to a party to amend their pleadings at any stage of the proceedings.

It provides as follows:

10 ***“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. ”***

The principles governing the amendment of pleadings as laid down by courts of law include the following;

- 15 ***a. Amendments are allowed by the courts so that the real question in controversy between the parties is determined and justice is administered without undue regard to technicalities;***
- 20 ***b. An amendment should not work an injustice to the other side. An injury that can be compensated by an award of damages is not treated as an injustice;***
- c. Multiplicity of proceedings should be avoided as far as possible and all amendments which avoid such multiplicity should be allowed;***
- 25 ***d. An application that is made malafide should not be granted;***
- e. No amendments should be allowed where it is expressly or impliedly prohibited by any law;***
- 30 ***f. The court shall not exercise its discretion to allow an amendment which has the effect of substituting one distinctive cause of action for another.***

35 ***(See: Gaso Transport Services (Bus) Ltd vs Obene (1990-1994) EA 88; Mulwooza & Brothers Ltd vs Shah & Co. Ltd, SCCA No. 26 of 2010; Ushang Limited vs Airtel Uganda & American Tower Co. Ltd Miscellaneous Application no. 1930 of 2021 and Okello Wilbert vs Obel Robert Miscellaneous Application No.97 of 2020)***

The applicant sets out some facts in *paragraph 5* of the affidavit in support of the application that were not known to the applicant at the time the suit was filed and considered material to the just determination of his case.

40 I also find that the instant application is neither barred by law nor is it intended to substitute the cause of action. It is properly before this court which is vested with the discretion of deciding whether or not



to allow the amendments sought. The amendment that arises out of such necessity that follows discovery of new facts or one that would require consequential amendments to be added would not ordinarily occasion an injustice to the opposite party.

5 Since therefore this application is made in good faith, intended to avoid multiplicity of proceedings, and without any evidence of prejudice likely to be suffered by the respondents, I am inclined to grant it.

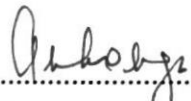
Accordingly, the applicant is directed to effect the necessary amendments to the pleadings and to serve the other parties within 15 days from the date of delivery of this ruling. The WSD by the Commissioner, Land Registration and the amended WSDs shall be filed within 15 days after service has been effected to the defendants; and the rejoinder within five days after receiving the WSD.

10 The application is hereby granted.

Costs in the cause.

*I so order.*

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**Alexandra Nkonge Rugadya**  
**Judge.**

**2<sup>nd</sup> June, 2022**

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Delivered by email  
Ankonge  
2/6/2022