

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**LAND DIVISION**

**MISCELLANEOUS APPLICATION NO. 2306 OF 2021**  
**(ARISING FROM CIVIL SUIT NO. 461 OF 2017)**

- 1. SAGOO HARBHAN SINGH**
- 2. SAGOO BALBIR SINGH ::::::::::::::::::::::::::::::::::::::: APPLICANTS**

**VERSUS**

- 1. NATHAN MUGISHA**
- 2. BEATRICE MUGISHA**
- 3. DEPARTED ASIANS' PROPERTY CUSTODIAN BOARD**
- 4. ATTORNEY GENERAL ::::::::::::::::::::::::::::::::::::::: RESPONDENTS**

**BEFORE HON. JUSTICE NAMANYA BERNARD**

**RULING**

***Introduction:***

1. The applicant brought this application under **Section 33** of the **Judicature Act (Cap 13)**, **Section 98** of the **Civil Procedure Act (Cap 71)** (“CPA”), **Order 1 rule 10(1), (2) & (4)** and **Order 52 rules 1 & 3** of the **Civil Procedure Rules (S.I 71-1)** (“CPR”) seeking for orders that:
  - a) The proceedings in Civil Suit No. 461 of 2017 pending judgment be stayed and/ or set aside.

- b) The applicants be joined as defendants in Civil Suit No. 461 of 2017.
  - c) That a fresh trial be conducted for the applicants to be heard before judgment is delivered.
  - d) Costs of this application be borne by the respondents.
2. The main grounds of the application are:
- (a) That the applicants are the registered proprietors of property comprised in LRV 732 Folio 1 Plot 52, Kiira Road, Jinja Municipality, Jinja district (hereinafter “the suit property”).
  - (b) That adding the applicants to Civil Suit No. 461 of 2017 will enable court to effectually and completely adjudicate upon and settle all questions involved in the suit.
3. The application is supported by affidavits sworn by Kabi Geoffrey (holder of powers of attorney of the applicants). The application is opposed by the respondents (see affidavits in reply sworn by Nathan Mugisha and Bizibu George William).
4. The applicants were represented by *Mr. Steven Muzuusa*. The 1<sup>st</sup> and 2<sup>nd</sup> respondents were represented by *Mr. Obed Mwebesa*. The 3<sup>rd</sup> and 4<sup>th</sup> respondents were represented by *Mr. Mark Muwonge, State Attorney, Attorney General’s chambers*. Both parties filed written submissions which I have considered.

5. The background of this application is that the 1<sup>st</sup> and 2<sup>nd</sup> respondents sued the 3<sup>rd</sup> and 4<sup>th</sup> respondents in C.S No. 461 of 2017 seeking for; a declaration that they are the lawful owners of the suit property; an order directing the Registrar of Titles to issue a title in their names; general damages; and costs of the suit.
6. Civil Suit No. 461 of 2017 was set down for hearing, evidence was adduced, and the Court issued directives to parties to file written submissions. The Court then fixed the case on the 14<sup>th</sup> June 2021 at 12:30pm, to ascertain whether parties had complied with the schedules for filing written submissions, whereupon the Court would fix a date for judgment. However, before the Court could fix the date for delivering judgment, the applicants filed the instant application seeking to added to the suit as defendants.

***Consideration:***

7. The main issue for determination is whether or not the applicants should be added as defendants in Civil Suit No. 461 of 2017, a suit whose hearing is complete, and is pending delivery of judgment.
8. ***Order 1 rule 10(2)*** of the ***CPR*** provides that:

“(2) 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.” (underlining is mine for emphasis).

9. The case of ***Departed Asians Property Custodian Board v. Jaffer Brothers Ltd (Supreme Court Civil Appeal No. 9 of 1998) [1999] UGSC 2*** considered the meaning of **Order 1 rule 10(2)** of the **CPR** (per **G.W. Kanyeihamba, J.S.C**):

“This rule is similar to the English R.S.C Order 16 r. 11 under which the case of *Amon v. Raphael Tuck & Sons Ltd, (1956) 1 ALLER p. 273*, was considered and decided and in which it was said that a party may be joined in a suit, not because there is a cause of action against it, but because that party’s presence is necessary in order to enable the court effectually and completely adjudicate upon and settle all the questions involved in the cause or matter.” (underlining is mine for emphasis).

10. **J.N. Mulenga J.S.C** in the case of **Jaffer Brothers** (supra) further elaborated on the criteria that must be met by a party interested in being added to the suit under **Order 1 rule 10(2)** of the CPR, and he stated thus:

*“I have not laid my hands on any reported decision in East Africa directly on the point of criteria for determining that the presence of a person is necessary under O.1 r.10(2) of the Civil Procedure rules. **Nirmal Singh Vs Ram Singh (1961) EA 168** does not appear to me to be helpful, as it is concerned with misjoinder as plaintiff of a person held to have no capacity to sue. However, taking a leaf from authorities in other jurisdictions having similar, and even identical rules of procedure, I would summarize the position as follows: For a person to be joined on the ground that his presence in the suit is necessary for effectual and complete settlement of all questions involved in the suit one of two things has to be shown. Either it has to be shown that the orders, which the plaintiff seeks in the suit would legally affect the interests of that person, and that it is desirable, for avoidance of multiplicity of suits, to have such person joined so that he is bound by the decision of the court in that suit. Alternatively, a person qualifies, (on application of a defendant) to be joined as a co-defendant, where it is shown that the defendant cannot effectually set up a defence he desires to set up unless that person is joined in it, or unless the order to be made is to bind that person. (See **Mulla on***

***the Code of Civil Procedure of India) 14<sup>th</sup> Ed. By J.M. Shelat, Vol.11 pp. 858 and 864 — 5; and Amon vs. Raphael Tuck & Sons Ltd [1956] 1 All ER 273 at p.290.***”  
(underlining is mine for emphasis).

11. In summary, a person seeking to be added to a suit as a defendant, only has to satisfy ***either*** of the following two things:
  - i) That the orders sought by the plaintiff in the suit would legally affect the interests of that person; or
  - ii) That the defendant cannot effectively set up a desirable defence to the suit unless the person sought to be added is joined.
  
12. This is the position of the law as deduced from the cases of ***Jaffer Brothers*** (supra); ***Samson Sempasa v. P.K. Sengendo Miscellaneous Application No. 577 of 2013 (Arising from Civil Suit No. 234 of 2013)***; and ***Murisho Shafi & Ors v. Kalisa Kalangwa Moses, Miscellaneous Application No. 0437 of 2016 (Arising from Civil Suit No. 0148 of 2016)***.
  
13. **Section 33** of the ***Judicature Act (Cap 13)*** provides that:

*“The High Court shall, in the exercise of the jurisdiction vested in it by the Constitution, this Act or any written law, grant absolutely or on such terms and conditions as it thinks just, all such remedies as any of the parties to a cause or matter is entitled to in respect of any legal or equitable claim properly*

*brought before it, so that as far as possible all matters in controversy between the parties may be completely and finally determined and all multiplicities of legal proceedings concerning any of those matters avoided.*” (underlining is mine for emphasis).

14. In the instant application, the applicants claim that they are the registered proprietors of the suit property (see paragraphs 2, 3, & 5 of the affidavit sworn by Kabi Geoffrey).
15. In H.C.C.S No. 461 of 2017, the 1<sup>st</sup> and 2<sup>nd</sup> respondents seek a declaration that they are the lawful owners of the suit property (see paragraph 4 of the plaint).
16. In his affidavit in reply sworn on the 21<sup>st</sup> December 2021, the 1<sup>st</sup> respondent claims ownership of the suit property (see paragraphs 3 & 4).
17. In the affidavit in reply sworn by Bizibu George William (on behalf of the 3<sup>rd</sup> and 4<sup>th</sup> respondents) on the 18<sup>th</sup> February 2022, he states that the 1<sup>st</sup> and 2<sup>nd</sup> respondents are in possession of the suit property, and that the Ministry of Finance, Planning and Economic Development is mandated to dispose of, the suit property (see paragraphs 5,6,7 & 8).

18. Counsel for the applicants argues that the orders sought by the 1<sup>st</sup> and 2<sup>nd</sup> respondents, with regard to the suit property, would directly affect the applicants' interest in the same property.
19. Counsel for the 1<sup>st</sup> and 2<sup>nd</sup> respondents argue that the Court has already completed the hearing of H.C.C.S No. 461 of 2017, that the suit is pending delivery of judgment, and that therefore, the Court is *functus officio*. Counsel further argues that the respondents have been in constant occupation of the suit property, and that the applicants do not satisfy the legal requirements for repossessing the suit property. Finally, counsel relying on the legal maxim, *dominus litis*, argued that the plaintiff cannot be forced to sue a party he does not want to sue.
20. Counsel for the 3<sup>rd</sup> and 4<sup>th</sup> respondents argues that the suit is time barred; and that the applicants do not satisfy the legal requirements for repossessing the suit property under the ***Expropriated Properties Act (Cap 87)***.
21. I do not agree with the arguments raised by counsel for the 1<sup>st</sup> and 2<sup>nd</sup> respondents, that it is too late for the applicants to bring the instant application, because hearing of the suit has been completed. ***Order 1 rule 10(2)*** of the ***CPR*** allows the applicants to bring an application of this nature at **“any stage of the proceedings”**. This means that as long as court is yet to pronounce the judgment, even when hearing of the case is



complete, a person is entitled to bring an application under **Order 1 rule 10(2)** of the **CPR** for addition of parties to the suit.

22. As to whether the applicants satisfy the legal requirements for repossession of the suit property under **Expropriated Properties Act (Cap 87)**, as argued by counsel for the respondents, my opinion is that this is an issue that will be further investigated by the Court after all parties to the suit have filed pleadings and adduced evidence.
23. Counsel for the 3<sup>rd</sup> and 4<sup>th</sup> respondents raised the question of the applicants' suit being time barred, and I do not agree that the Statute of limitation would apply to a case of this nature, involving the repossession of properties under **Expropriated Properties Act (Cap 87)** (see the case of **Attorney General v. Mitha & Sons Ltd, High Court (Land Division) Misc. Cause No. 10 of 2010**).
24. It is my finding therefore, that the orders sought by the 1<sup>st</sup> and 2<sup>nd</sup> respondents, to have the Court declare them as the lawful owners of the suit property, will legally affect the interests of the applicants, who also claim to be the lawful owners of the suit property. On this basis, the applicants satisfy the criteria for being added as defendants to the suit, and in accordance of the Supreme Court case of **Jaffer Brothers** (supra), this application succeeds.

25. The presence of the applicants will enable the Court to effectually, and completely adjudicate upon, and settle all the questions involved in the matter, and avoid multiplicity of legal proceedings.

**Conclusion:**

26. In the result, **I ORDER** as follows:

- a) The proceedings in H.C.C.S No. 461 of 2017 are hereby set aside.
- b) The applicants are hereby joined as defendants in H.C.C.S No. 461 of 2017.
- c) That a fresh trial in H.C.C.S No. 461 of 2017 shall be conducted.
- d) The 1<sup>st</sup> and 2<sup>nd</sup> respondents shall file an amended plaint by the 19<sup>th</sup> September 2022.
- e) The rest of the parties to the suit shall observe the timelines for filing their respective pleadings as provided for in the **Civil Procedure Rules**.
- f) The costs of this application shall abide the outcome of the main suit.

**I SO ORDER.**

**NAMANYA BERNARD**  
**Ag. JUDGE**  
**2<sup>nd</sup> September 2022**