

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**(LAND DIVISION)**  
**MISCELLANEOUS APPLICATION NO.1287 OF 2022**

*(Arising from Civil Suit No. 516 of 2022)*

**LWANYANGA**

**FRANK:.....APPLICANT**

**VERSUS**

**1. BISHOP DAVID KIGANDA**

**2. HIS KINGDOM BROADCASTING SERVICES**

**LTD:.....RESPONDENTS**

**Before: Lady Justice Alexandra Nkonge Rugadya.**

**Ruling.**

**Introduction:**

The applicant through his lawyers **M/s Matovu N.J Co. Advocates** brought this application by motion under the provisions of **Section 33 of the Judicature Act cap.13, Section 98 of the Civil Procedure Act cap.71, Order 1 rule 13 and order 52 rules 1 & 3 of the Civil Procedure Rules SI 71-1** seeking orders that the 2<sup>nd</sup> respondent be added as a party/2<sup>nd</sup> defendant in **Civil Suit No.516 of 2022**, the plaint be amended to reflect the cause of action against the 2<sup>nd</sup> respondent and costs of the application be in the cause.

**Grounds of the application:**

The grounds upon which this application is premised are contained in the applicant's affidavit in support wherein he deponed that while **Civil Suit No.516 of 2022** was initially filed against the 1<sup>st</sup> respondent who was the only person popularly known and actually running the business on ground, and whose containers are being complained of in trespass, it has since come to the applicant's attention that the 1<sup>st</sup> respondent deliberately conducts his businesses through entities or companies in which he is a majority shareholder, such as the 2<sup>nd</sup> respondent.

That the 1<sup>st</sup> respondent caused the registration of the adjoining land comprised in **Kibuga Block 12 Plot 1627 at Mengo** into the names of the 2<sup>nd</sup> respondent in whose names he



conducts the business of renting the commercial container, among others purportedly on the said land and has in the process deposited the containers on to the suit land thus trespassing thereon.

5 That by wrongly and/or depositing the commercial containers on to the suit land, the 1<sup>st</sup> respondent who to-date insists that the containers are well within the boundaries of the adjoining land comprised **Plot 1527** which is registered in the 2<sup>nd</sup> respondent's name and not on the suit land comprised in **Plot 1472, Block 12 Mengo** which belongs to the applicant; and that in the main suit, it shall be proved that the containers complained of are in trespass on to the suit land as per the survey and boundary opening report annexed on to  
10 the plaint clearly indicates.

In addition, that the 1<sup>st</sup> respondent being the guiding mind of the 2<sup>nd</sup> respondent is the actual owner as well as the business caretaker of the commercial containers therefore it is in the interest of justice that the facts on ground in respect of the conduct of the business complained of as the source of trespass be investigated by court so that the issues in  
15 controversy are conclusively resolved by adding the 2<sup>nd</sup> respondent as a party to **Civil Suit No. 516 of 2022** and the plaint amended as per the draft.

The 1<sup>st</sup> and the 2<sup>nd</sup> respondent were each duly served. The 1<sup>st</sup> respondent on his part wrote to this court through his lawyers who by letter dated 25<sup>th</sup> August 2022 intimated to this court that they did not intend to oppose the application.

20 As for the 2<sup>nd</sup> respondent, it is now settled law that where facts are sworn to in an affidavit and they are not denied by the opposite party, the presumption is that they are accepted. (**See: Samwiri Mussa versus Rose Achen (1978) HCB 297; Eridadi Ahimbisibwe versus World Food Programme & Others [1998] KALR 32; Kalyesubula Fenekansi versus Luwero District Land Board & Others**). Therefore, where no affidavit in reply is filed, the  
25 affidavit in support is taken to be unchallenged and truthful, subject to whether the contents pass the test of evidence and is cogent and of probative value.

In the present case, since the facts and evidence as adduced in the affidavit in support were not denied by any of the 2<sup>nd</sup> respondent's 3 directors, I am inclined to regard the same as uncontested.

30 Consequently, I find it proper to exercise this court's discretion and hereby grant the application in the following terms:


- 1. That the applicant shall file in court an amended plaint within ten (10) days from the date of this ruling.**



2. *The plaintiff/applicant shall serve all defendants/respondents with the amended plaint and summons to file their defences within ten (10) days upon receiving the same.*

5      3. *No costs granted.*

I so order.

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.....  
*Alexandra Nkonge Rugadya*  
Judge  
6<sup>th</sup> September 2022.

*Delivered by  
email*

*Alexandra*

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*6/9/2022 .*

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