

2. **The applicants be granted leave to amend the plaint in Civil Suit No.293 of 2016 and Miscellaneous Application No.284 of 2021 to add the 9th, 10th, & 11th respondents as the 9th, 10th, & 11th defendants and respondents respectively and to also accommodate facts of the claim resulting from the addition 9th, 10th, & 11th defendants/respondents as defendants/respondents to enable court to fairly adjudicate and determine the matters in controversy between the parties;**
3. **Costs of this application be provided for.**

Grounds of the application:

10 The grounds upon which the application is premised are contained in the affidavit in support of the application deposed by Counsel Mashipwe Samson, an advocate of the High Court and all courts subordinate thereto practicing with **M/s Stabit Advocates** who currently represent the applicants.

15 He stated *inter alia* that the 10th respondent who is the registered proprietor of the suit land comprised in **Block 244 plot 1676 Kisugu Kampala**, having obtained the same from the 9th respondent during the pendency of the main suit herein, also obtained a loan of **Ugx. 1,247,261,336 (One billion two hundred forty-seven million three hundred thirty-six shillings only)** from the 11th respondent on 23rd June 2020 using the suit property and the 11th respondent went ahead to register the mortgage as an encumbrance on the suit land.

20 That some of the orders sought by the plaintiffs in **Civil Suit No. 293 of 2016** as well as **Miscellaneous Application No.284 of 2021** will directly affect the 9th, 10th & 11th respondent thus the need to amend the facts in the claim as well as the prayers sought by the applicants in order to accommodate the 9th, 10th, & 11th respondents.

25 In addition, that this application will not in anyway prejudice any of the respondents in this matter as it is necessary for the final determination of the suit for purposes of determining the real questions in controversy between the parties and to avoid multiplicity of proceedings between the parties in respect of the same subject matter.

30 The 9th, 10th and 11th respondents were duly served. They did not oppose the application. Court however noted that the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th and 8th defendants were never served with court process.

Service of court process is generally governed by **Order 5 CPR** for the service of summons. In particular, it is a requirement under **Order 5 rule 1 subrule (2) of the Civil Procedure Rules S I 71-1**, that service of summons shall be effected within twenty-one days from the date of issue.

Under **Order 5 Rule 1 (3)** where (a) service has not been effected within twenty-one days from the date of issue; and (b) there is no application for an extension of time; or (c) the application for extension of time has been dismissed, the suit shall be dismissed without notice.

5 In the instant case, this court directed the applicant to effect service of both the application and written submissions on the respondents but according to the affidavit of service, only the 9th, 10th, 11th Respondents were served while the 1st – 8th respondent were never served.

Accordingly, this matter as filed against the 1st – 8th respondents is hereby dismissed for want of service under **Order 5 rule 1 (3) (supra)**.

10 I shall now proceed to determine this matter as against the 9th, 10th & 11th respondents who despite having been served, did not file an affidavit in reply.

Determination by court.

I have carefully read and considered the pleadings, evidence and submissions of the applicant and the following are in my opinion, the issues for determination by court:

15 **1. Whether the applicant is a necessary party to High Court Civil Suit No. 454 of 2014 to warrant his addition as a party?**

2. What remedies are available to the parties?

Resolution of issues.

20 **Issue 1: Whether the applicant is a necessary party to High Court Civil Suit No. 454 of 2014 to warrant his addition as a party?**

Order 1 rule 1 of the Civil Procedure Rules S.I 71-1 empowers Court to join parties who may have a claim or relief on the subject matter under issue.

25 **Order 1 rule 10 (2) of the Civil Procedure Rules** permits any party to a pending suit to move court to add a party whose presence in the suit is necessary to enable the court to effectually and completely adjudicate upon and settle all questions involved in the suit. The applicant claims that the Board is one such person.

30 For a party to be joined on ground that their presence is necessary for the effective and complete settlement of all questions involved in the suit, 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 suits, 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. (**Departed Asians Property Custodian Board v. Jaffer Brothers Ltd [1999] I.E.A 55; See also: Gokaldas Laximidas Tanna v. Store Rose Muynza, H.C.C.S No. 7076 of 1987 [1990 - 1991] KALR 21.**)

The purpose of joinder of parties is therefore to avoid multiplicity of suits. Under **section 33 of the Judicature Act (Cap. 13)** court has powers to grant remedies so that as far as possible all matters in controversy between the parties are completely and finally determined and all multiplicities of legal proceedings concerning any of the matters avoided.

5 In the instant case, the applicants seek that the 9th, 10th & 11th respondents be added as defendants to the main suit on grounds that the orders sought in the suit directly affect the said respondents. The applicants aver that the 10th respondent who is the registered proprietor having obtained the land from the 9th respondent also obtained a loan of **Ugx. 1,247,261,336 (One billion two hundred forty-seven million three hundred thirty-six**
10 **shillings only)** from the 11th respondent on 23rd June, 2020 using the suit property and the 11th respondent went ahead to register the mortgage as an encumbrance on the suit land.

It is now settled law that where no affidavit in reply is filed, the 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. (**See: Tororo District Administration v Andalalapo**
15 **ltd [1997] KALR 126**).

The above facts were never rebutted by the 9th, 10th or 11th respondents who did not file an affidavit in opposition of the application and I am therefore inclined to accept the truthfulness of the affidavit in so far as it relates to this application.

Order 6 Rule 19 of the CPR empowers the court to grant leave to a party to amend their
20 pleadings at any stage of the proceedings. It provides as follows:

“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.”

25 Upon consideration of the averments in the affidavit and the submissions of the applicant, I find that this application is not expressly or impliedly barred by any law. Neither is it crafted to substitute one distinct cause of action for another.

The application is based on the principle that a plaintiff is free to choose which party to sue. I am also satisfied that it has not been brought in bad faith. It has no potential of working an
30 injustice or prejudice against any of the respondents. A grant of the amendment will enable the court to fully and finally determine all the questions in controversy between the parties, thereby avoiding a multiplicity of actions.

It is therefore proper for this court to exercise its discretion and allow the application, based on the grounds as raised by the applicant, and in the terms below:

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1. The 9th, 10th, & 11th respondents are to be added as defendants to the main suit and as respondents in the resulting applications;

2. The applicants are granted leave to amend his pleadings in Civil Suit No.293 of 2016 & Miscellaneous Application No.284 of 2021;

3. The applicants shall file their amended plaint and application within 15 days from the date of delivery of this ruling;

4. No orders as to costs.

I so order.


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Alexandra Nkonge Rugadya

Judge

6th September, 2022

Delivered by
email
Alexandra N
6/9/2022