

**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT KAMPALA  
LAND DIVISION  
MISCELLANEOUS APPLICATION NO. 1040 OF 2022  
ARISING FROM CIVIL SUIT NO. 1088 OF 2021**

**1. ZALWANGO MARGRET NALONGO  
2. LUMANSI JOHN KAZIBWE  
3. KIMERA EDDY  
(ADMINISTRATORS OF THE ESTATE OF  
FESTOR BENJA ALL SUING THROUGH  
THEIR ATTORNEY KICONCO MEDARD) ::::::::::::::::::::::::::: APPLICANTS**

**VERSUS**

**1. LADHA KASSAM & CO. LTD  
2. EBRAHIM KASSAM & SONS PROPERTIES LTD  
3. NUHU WADEMBERE  
4. COMMISSIONER LAND REGISTRATION  
5. MUGUMYA MOSES  
6. BLUE CITY INVESTMENTS LTD  
7. MELVIN KARUHANGA  
8. FERDINAND MUSIIMENTA  
9. ATTORNEY GENERAL ::::::::::::::::::::::::::: RESPONDENTS**

**BEFORE: HON JUSTICE DR. FLAVIAN ZEIJA**

**RULING**

The applicants brought the instant application under Section 98 CPA, Section 33 Judicature Act and Order 1 rule 13 and 52 rules 1 and 3 Civil Procedure Rules SI 71-1 seeking for orders that;

- a) *The 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup> and 9<sup>th</sup> respondents be added as defendants in Civil Suit No. 1088 of 2021,*
- b) *The plaint be amended to reflect the cause of action against 5<sup>th</sup> -9<sup>th</sup> respondents and*
- c) *Costs of the application be provided for.*

The grounds in support of this application are set out in the affidavit in support deponed by Medard Kiconco who is the Applicants' lawful attorney. Briefly that;

- a) The applicants are joint administrators of the late Festo Banja's estate who died intestate.
- b) The late Festo Banja acquired title to land, with no encumbrance, comprised in Mailo Register Vol. 46 Folio 23 before the same was transferred to the Mailo Register and registered as Block 408, Plot 3, Busiro Land at Sisa Buganda in 1915.
- c) It has turned out that parallel freehold titles have been created on the suit land and subdivided into Plots 206, 207, 208, 209 and 210 by the 4<sup>th</sup> respondent in collusion with the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents.
- d) Plot 210 was transferred and registered in the names of the 3<sup>rd</sup> respondent while Plot 208 was transferred and registered in the names of the 2<sup>nd</sup> respondent.
- e) Plots 206, 207 and 209 were fraudulently acquired by 5<sup>th</sup> and 6<sup>th</sup> respondents respectively.
- f) The 5<sup>th</sup> respondent has since merged the said plots into plot 334.
- g) The 7<sup>th</sup> and 8<sup>th</sup> respondents are directors in the 6<sup>th</sup> respondent and they are the parties who perpetuated the alleged fraud.
- h) The 9<sup>th</sup> respondent's agents in collusion participated and were involved in the process that culminated into the generation of the impugned titles, illegal occupation and use of the suit land.
- i) The 9<sup>th</sup> respondent's agents directly omitted to restrain the illegal occupation and use of the suit land by the 5<sup>th</sup> and 6<sup>th</sup> respondents.
- j) The parties sought to be heard should not be condemned unheard.

The grounds in opposition to this application are contained in the 6<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> respondents' affidavits. The 7<sup>th</sup> respondent who is a director in the 6<sup>th</sup> respondent company deponed an affidavit on his own behalf and on behalf of the 6<sup>th</sup> respondent company. The 8<sup>th</sup> respondent deponed an affidavit on her own behalf. The grounds in both affidavits are similar. Briefly that;

- a) This application is barred by law having been brought by a one Medard Kiconco with no locus to do so.
- b) The 6<sup>th</sup> respondent having conducted the necessary due diligence purchased FRV WAK6324 Folio 7 Block (Road) 408 Plot 209 at Sisa and got registered as proprietor on 25<sup>th</sup> March 2022. The 7<sup>th</sup> respondent as





director of the 6<sup>th</sup> respondent signed the transfer form dated 17<sup>th</sup> March 2022.

- c) At the time of the purchase and registration of the 6<sup>th</sup> respondent as proprietor, the 6<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> respondents had no knowledge or means of knowing of any dispute relating to the land since none was apparent either at the land registry or at the physical location of the land.
- d) The allegations of fraud against the 6<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> respondents have not been substantiated and the applicants therefore have no cause of action against the 6<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> respondents.
- e) The 7<sup>th</sup> and 8<sup>th</sup> respondents as directors of the 6<sup>th</sup> respondent, are protected by the principle of corporate personality and cannot be sue in their own individual capacity.
- f) The presence of the 6<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> respondents is completely unnecessary for the effectual and complete adjudication of the questions in the underlying suit.

In this application, the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 9<sup>th</sup> respondents did not file any affidavits in reply yet there is an affidavit of service on court record sworn by Arinaitwe Yonesan c/o Ms Arthur-Arutha Legal & Co. Advocates affirming that all respondent were duly served with the instant application.

### **Representation**

The applicants were represented by M/s Allan & Partners Advocates whereas the respondents were represented by MMAKS Advocates.

Before delving into the merits of this application, I shall first dispose of the preliminary objections raised by the 6<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> respondents.

**First**, that Medard Kiconco, the lawful attorney of the applicants did not have locus to bring this application against the respondents. Counsel for the 6<sup>th</sup>, 7<sup>th</sup>, and 8<sup>th</sup> respondents, while citing **Section 264 of the Succession Act** and the case of **Rebecca Njeri Vs. Voilet Wambui Muturi Civil Appeal No. 178 of 2016 and Nabukenya Agnes Vs. Martin Strokes & Another HMC No. 38 of 2021** submitted that the applicants have no authority in law as Administrators of the estate of the Late Festo Banja to transfer court granted administrative authority of prosecuting suits to another person by way of Powers of Attorney.

Counsel for the applicants in response to the objection submitted that Order 3 Civil Procedure Rules gives a right to any party to a suit to appear



through an attorney. Counsel further submitted that in the instant case the parties to the application and the main suit are administrators of the estate of the Late Festo Banja and not Medard Kiconco their attorney. That the attorney is not a party to the proceedings and is only exercising his duties under Order 3 of the Civil Procedure Rules SI 71-1. As such this action is properly commenced under the Civil Procedure Act and the rules there under.

I note that a similar objection was raised by the 1<sup>st</sup> 2<sup>nd</sup> and 3<sup>rd</sup> respondents in **Miscellaneous Application No. 2202 of 2021 arising from Civil Suit No. 1088 of 2021** which this court fully determined on the 3<sup>rd</sup> March 2022. This court already pronounced itself on the same and the ruling is on record. Under page 9 of the ruling this court stated and I reproduce;

***"The rationale of section 264 of the Succession Act which is the basis for the Respondents' contention has in my view been misapprehended by Counsels for the 1st-3rd Respondents. It was intended to shield away persons not clothed with legal power from exposing estates of deceased persons to the far reaching repercussions of court processes. It however does not include duly authorized attorneys."***

Order 3 rule 2 of the Civil Procedure Rules is conclusive on court action by recognized agents. It states;

***The recognised agents of parties by whom such appearances, applications and acts may be made or done are—***

***(a) persons holding powers of attorney authorising them to make such appearances and applications and do such acts on behalf of parties;***

***and***

....

In view of the foregoing position therefore, the first preliminary objection fails.

**The 2<sup>nd</sup> preliminary objection** as to whether the applicants' failure to substantiate the allegations of fraud against the 6<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> in this application should imply no cause of action against them, I am cognizant that this is an application to add parties and to amend the plaint in order to reflect the cause of action against the 5<sup>th</sup>-9<sup>th</sup> respondents. It is therefore, premature to expect the applicants to have substantiated the allegations of fraud at this stage. As such, the averment that the applicants have no cause of action in this application is equally without merit.

The third preliminary objection relates to whether the 7<sup>th</sup> and 8<sup>th</sup> respondents cannot be sued in their individual capacity on grounds of



being shielded by the corporate veil. Citing the case of Corporate Insurance Company Limited Vs. Savemax Insurance Brokers Limited [2002] 1 EA 34 counsel for the 6<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> respondents submitted that it is necessary first for the applicants to make an application to lift the corporate veil of the 6<sup>th</sup> respondents and demonstrate through evidence that Plot 209 was purchased for use for 7<sup>th</sup> and 8<sup>th</sup> respondents own gain. I concur that indeed a company is a separate juristic person in the eyes of the law; capable of acting in its own name, suing and/or being sued per Salomon vs. Salomon & Company Limited [1897] AC 22. In this regard, the company is said to be cloaked in a 'veil of incorporation' which means that in its dealings, it is directly and independently responsible for its acts and its directors are not personally liable.

However, there are instances when the veil of incorporation may be lifted. In such instances, the law goes behind the corporate personality to attach responsibility to the individual shareholders or directors; thereby ignoring the separate personality of the company in favor of the economic reality prevailing in the circumstance. The circumstances when a corporate veil can be lifted are to be found in a lot of authorities both foreign and domestic.

In Halsbury's Laws of England, 4<sup>th</sup>Edn para. 90; the issue of piercing the veil of incorporation is discussed as follows;

***"Notwithstanding the effect of a company's incorporation, in some cases the court will 'pierce the corporate veil' in order to enable it to do justice by treating a particular company, for the purpose of the litigation before it, as identical with the person or persons who control that company. This will be done not only where there is fraud or improper conduct but in all cases where the character of the company, or the nature of the persons who control it, is a relevant feature. In such case, the court will go behind the mere status of the company as a separate legal entity distinct from its shareholders or even as agents, directing and controlling the activities of the company. However, where this is not the position, even though an individual's connection with a company may cause a transaction with that company to be subjected to strict scrutiny, the corporate veil will not be lifted"***

Similarly, in the case of Salim Jamal and 2 Others vs. Uganda Oxygen Ltd & 2 Others [1997] II KA LR 38, the Supreme Court held that;

***"corporate personality cannot be used as a cloak or mask for fraud. Where this is shown to be the case, the veil of the corporation may***



**be lifted to ensure that justice is done and the court does not look helplessly in the face of such fraud".**

Practically applications are formally made to court under Section 20 of the Companies Act 2012 to lift the veil of incorporation. I have carefully looked at the draft amended plaint which is on record. The applicants under paragraph 23 (d) and (e) prays;

**(d) A declaration that the purported subdivision and transfer of the suit land into the names of 1<sup>st</sup> 2<sup>nd</sup> 3<sup>rd</sup> 5<sup>th</sup> and 6<sup>th</sup> defendants is fraudulent and illegal.**

**(e) That the veil of incorporation of the 6<sup>th</sup> defendant be lifted.**

As can be discerned from the above, contrary to be respondents' assertions, the applicants did make a prayer for lifting the veil. Section 20 of the Company act 2012 provides that;

**"The High Court may, where a company or its Directors are involved in acts including tax evasion, fraud or where, save for a single member company, the membership of a company falls below the statutory minimum, lift the corporate veil".**

It is therefore clear that for the court to lift the veil, the applicant must prove fraud. In the case Stanbic Bank Uganda Ltd Vs Ducat Lubricants

(U) Ltd & 3 Others MA- No. 845 of 2013, court noted that;

**"The provision does not indicate at which stage the High Court may lift the corporate veil. However, by using the term "involvement in fraud" it is apparent that it should be established to the satisfaction of the court".**

The applicants have raised allegations of forgery in land titles and fraudulent acts against the 7<sup>th</sup> and 8<sup>th</sup> respondents as directors of the 6<sup>th</sup> respondent whose presence in the main suit is therefore crucial to determine the said allegations. It is at that level that court would competently determine whether to lift the veil or not. This preliminary objection also fails.

Since all preliminary objections in this application have failed, I now proceed to determine the substantive application.

The crux of this application is whether this court should be pleased to add the 6<sup>th</sup> 7<sup>th</sup> and 8<sup>th</sup> respondents as defendants in the main suit. Counsel for the applicants submitted that the 6<sup>th</sup> respondent, a private company is registered as proprietor in Plot 209 and the transfer was signed by the 7<sup>th</sup> and 8<sup>th</sup> respondents as a directors of the company. That according to the documents accessed by the applicants after the filing of the main suit, plot 206, 207 and 209 on the same block were fraudulently acquired by the 5<sup>th</sup> and 6<sup>th</sup> respondents respectively. That the 5<sup>th</sup> respondent has since merged



the said plots into plot 334 of the same block. That the said respondents perpetrated the said acts well knowing that the purported transactions leading to the acquisition of the documents held by the 5<sup>th</sup> and 6<sup>th</sup> respondents' predecessors in the purported title were acquired fraudulently and that the suit challenging the said documents was pending before this court. That the 7<sup>th</sup> and 8<sup>th</sup> respondents are the parties who perpetrated the said fraud. The applicant sought to amend the plaint and include the particulars of fraud against the 6<sup>th</sup> 7<sup>th</sup> and 8<sup>th</sup> respondents. Counsel for the 6<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> respondents on the other hand maintained that as company directors, the 7<sup>th</sup> and 8<sup>th</sup> respondents cannot be sued in their own individual capacity unless an application is made in court to lift the corporate veil of incorporation which was not done and hence the instant application offends the notorious and elementary principles of Company Law. Further, that the applicants had failed to demonstrate that the presence of the 7<sup>th</sup> and 8<sup>th</sup> respondents is necessary for the determination of questions in the suit.

The pivotal question before this court is simply whether to allow the joining of the 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup> and 9<sup>th</sup> respondents as defendants to Civil Suit No. 1088 of 2021 and whether the order to amendment of the pleadings ought to be granted. Amendments to pleadings are governed by Order 6 Rule 19 of the Civil Procedure Rules which provides as follows;

**19. Amendment of pleadings.**

***"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 test for allowing or disallowing amendments of pleadings has always been whether the intended amendment would be prejudicial to the other party's case. However, a great string of authorities postulate that even where there is a likely prejudice, an amendment will often be favored over the prejudice as long as the prejudice can sufficiently be compensated for in terms of costs. It therefore goes without saying that the burden heavily lies on the party opposing the amendment to demonstrate to court's satisfaction that the amendment will occasion such an injustice that it cannot be sufficiently compensated for by costs or that the amendment seeks to prejudice the rights of the opposite



party which rights are existing as at the date of the proposed amendment eg; by depriving him of the defense of limitation. See; **Mohan Musisi Kiwanuka vs. Asha Chand SCCA No. 14 of 2002** and **Eastern Bakery v. Castellino, C.A. C.A. No. 30/1958[1958] E.A 461** both cited with approval by the Supreme Court in **Mulowooza & Brothers Ltd vs. N Shah & Co. Ltd Civil Appeal No. 26 of 2010**.


Order 1 rule 3 provides for joinder of defendants; All persons may be joined as defendants against whom any right to relief in respect of or arising out of the same act or transaction or series of acts or 3 transactions is alleged to exist, whether jointly, severally or in the alternative, where, if separate suits were brought against those persons, any common question of law or fact would arise.

The purpose of joinder of parties is to enable court to effectually and completely deal with the matter in controversy and avoid multiplicity of proceedings. This purpose derives its origin from O.1 r 10(2) of the Civil Procedure Rules, to the effect that the Court may at any stage of the proceedings order the addition of "the name of any person whose presence before Court may be necessary in order to enable the Court to effectually and completely to adjudicate upon and settle all questions involved in the suit...". The application of these provision has duly been considered by the Supreme Court in **DAPCB versus Jaffer Brothers Ltd SCCA No.9 of 1998**.

In this application, the respondents have not set out any potential prejudice that they would suffer if the 5<sup>th</sup> -9<sup>th</sup> respondents are added as parties to the suit. The allegations of fraud levelled against the respondents shall be responded to by way of amended defence/pleadings. Secondly, this matter has never been heard by this court and therefore no damage would be done to the defendants' case. Allegations of fraud being of a serious nature, I find it pertinent that the 5<sup>th</sup> -9<sup>th</sup> respondents be added so as to enable this court completely resolve all matters in controversy.

I accordingly allow this application with the following orders;

- a) Let the applicants add the 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup> and 9<sup>th</sup> respondents to enable this court determine all matters in controversy.





- b) Leave is granted to the applicants to accordingly amend the  
plaint in civil suit No. 1088, file and serve all parties to the main case  
within a period of two weeks from the date of delivering this ruling.
- c) The respondents are equally at liberty to file and serve their  
respective Written Statements of Defense /Amended Statements  
of Defense within fifteen days from the date of receipt of service  
of the amended plaint.
- d) Costs of this application shall be in the cause.

Dated at Kampala this 18<sup>th</sup> day of October 2022



Flavian Zeija (PhD)  
**PRINCIPAL JUDGE**