

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(LAND DIVISION)

MISCELLANEOUS APPLICATION NO.1158 OF 2022

(Arising from Civil Suit No.919 of 2018)

SEMPALA ISAAC SEBAGGALA

(Suing through his Lawful Attorney

MOSES MUTEBI).....APPLICANT

VERSUS

1. NAKIYINGI ANNET

2. HON. NABILAH NAGGAYI).....RESPONDENTS

Before: Justice Alexandra Nkonge Rugadya.

Ruling.

The applicant, Mr. Sempala Isaac Sebaggala through his lawyers, ***M/s ADIL Advocates & Solicitors*** brought this application by notice of motion, under the provisions of ***Article 126 (2) (e) of the 1995 Constitution, Section 98 of the Civil Procedure Rules Cap. 71, Section 33 of the Judicature Act cap.13, and Order 1 rule 10 & 13 and Order 6 rules 19 & 31 of the Civil Procedure Rules S.I 71-1.***

The applicant seeks an order to be added as a defendant in ***Civil Suit No.919 of 2018***, and for the necessary amendments to the pleadings to be made and for costs of the application to be provided for.

Grounds of the application:

The grounds of the application are contained in the affidavit in support of the motion of Mr. Moses Mutebi, the applicant's lawful attorney. He states that Mr. Sempala Isaac Sebagala has high interest in the suit, owing the fact that he jointly purchased the suit land, which he holds together with his wife who is one of the defendants in the main suit.

That not only have the two been in quiet possession thereof, but have also developed the suit land and even applied to the Buganda Land Board to be issued with a certificate of title in respect of the same.

That the orders sought in the head suit directly affect the legal interests of the applicant in the jointly owned property which is the subject of the suit; and that he will be prejudiced if he is not added as a defendant in the main suit.



In addition, that for effective and expeditious handling of all disputes on the suit land, it is prudent that the applicant be added as a party, and for all the necessary amendments to the pleadings to be made so as to avoid multiplicity of suits; and ensure the proper and effective adjudication of all issues pertaining to the suit land.

- 5 None of the respondents opposed the application despite the fact that they were effectively served with court process through their lawyers **M/s Birungi & Co. Advocates.**

Consideration of the application.

10 I have carefully read the pleadings, evidence and submissions of the applicant, all of which I have taken into account to determine whether the instant application merits the prayers sought.

The application was filed by Mr. Moses Mutebi, the donee of powers of attorney. Attached to the application is the said instrument of authority, granted on 1st December, 2021 by the applicant,

15 The issue for determination in this application is whether the applicant can be added as a defendant in **Civil Suit No.919 of 2018** in the circumstances of this case.

The joinder of parties to pleadings is governed by **Order 1 r.10 (2)** CPR which provides that;

20 ***“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.”***

25 The fundamental consideration before a person can be joined a party is that such a party must establish that he/she has a high interest in the case.

In addition, it must be clearly demonstrated that the orders sought in the main suit would directly legally affect the party seeking to be added. **(See: *Departed Asians Property Custodian Board v. Jaffer Brothers Ltd [1999] I.E.A 55*)**

30 A party with interest must therefore demonstrate that his/her presence is necessary for the effective and complete settlement of all questions involved in the suit; and 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 the desired defence unless that person was joined or an order made that would bind that

 2

other person. (*See also: Gokaldas Laximidas Tanna v. Store Rose Muyinza, H.C.C.S No. 7076 of 1987 [1990 – 1991] KALR 21*)

In the instant case, it is the applicant's unchallenged claim that he has a high interest in the suit on grounds that the suit land was jointly purchased by him and his wife who is a defendant in the main suit and that they jointly own the same.

He also states that the two have been in quiet possession of the same and have since developed the land and even applied to the Buganda Land Board, to be issued with a certificate of title for the land.

He relies on a number of documents, including the sale agreement and others contained in **annextures B and C**, all attached to the application. 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 admitted and where affidavit in reply is filed, the affidavit in support is taken to be unchallenged and truthful. (*See: Tororo District Administration v Andalalapo Ltd [1997] KALR 126; Samwiri Mussa versus Rose Achen (1978) HCB 297*). The said presumption duly applies to this case.

Since the respondent did not file any response to this application, this court is inclined to exercise its discretion and grant the application in the following terms:

1. *The applicant is hereby added as a defendant in Civil Suit No.919 of 2018;*
2. *The plaintiff shall add the applicant as party to this suit and ensure that all the necessary amendments to the pleadings based on the applicant's claim as contained in this application are filed within a period of two weeks from the date of this ruling;*
3. *The applicant shall file his written statement of defence and effect service of the same on all parties to the suit within a period of 21 (twenty-one) days, from the date of receiving the amended plaint;*
4. *The amended rejoinder shall be filed and served within two weeks after receiving the WSD by the applicant.*
5. *No orders made as to costs.*

I so order.

.....
Alexandra Nkonge Rugadya
Alexandra Nkonge Rugadya

Judge

24th November, 2022.

*Delivered via
email.
24/11/2022*