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**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA AT KAMPALA**

**(LAND DIVISION)**

**MISCELLANEOUS APPLICATION NO. 601 OF 2022**

**(ARISING FROM CIVIL SUIT NO. 317 OF 2020)**

10 **MTN UGANDA-----APPLICANT**

**VERSUS**

**1.DENNIS KWIZERA**

**2.DEUS NSENGIYUNVA**

**3.NATIONAL WATER SEWERAGE CORPORATION-----RESPONDENTS**

15 **Before: Hon. Lady Justice Olive Kazaarwe Mukwaya**

**RULING**

The Applicant, MTN Uganda Limited brought this Application by way of Notice of Motion under S.98 of the Civil Procedure Act Cap 71, S.33 of the Judicature Act Cap 13, O.1 r 10(2) and O.52 r 1 & 3 of the Civil Procedure Rules SI. 71-1 as amended against the  
20 Respondents seeking orders that;

1. The 3<sup>rd</sup> Respondent be added as a necessary party to the suit.
2. The costs of this application abide in the main suit.

**Grounds of the application**

25 The grounds of the application were contained in the affidavit of the Mr. Phillip Wamimbi, the Senior Manager, Network Operations of the Applicant Company but briefly are that;

- a) The Respondents filed Civil Suit No. 317 of 2020 in the High Court Land Division seeking orders that the Applicant is a trespasser on their land comprised in Kyadondo Block 223 Plot 4246 and Kyadondo Block 223 Plot 76 situate at  
30 Namugongo, an order for the removal of the Applicant's underground cables among other prayers. A copy of the Complaint was attached and marked A.

- 5 b) In a letter dated 28<sup>th</sup> February 2022, National Water and Sewerage Corporation informed the Applicant about its intention to implement a project along Katosi – Kampala road entitled “Construction of the Kampala – Katosi Drinking Water Transmission Main”.
- 10 c) This required the Applicant’s quotations and nominated sub – contractor to carry out any alterations of the Applicant’s infrastructure along Jinja Road, Seeta-Ssonde Road and Ssonde-Namugongo Road. A copy of the said letter is attached and marked B.
- 15 d) National Water and Sewerage Corporation through its main contractor Sogea Satom handed over different sites along Jinja road, Seeta-Namugongo Road, Namugongo-Naalya Road and Naalya-Ntinda road where it was revealed that the Applicant owned some underground infrastructure.
- 20 e) In a letter dated 14<sup>th</sup> March 2019 addressed to the 3<sup>rd</sup> Respondent, the Applicant confirmed the existence of its underground infrastructure and nominated RAK Engineering Limited, being one of the Applicant’s authorized contractors in the maintenance of fibre to deal directly with Sogea Satom in as far as the relocation/restoration of the Applicant’s fibre was concerned. A copy of the letter was attached and marked C.
- 25 f) The 3<sup>rd</sup> Respondent’s contractor Sogea Satom and the Applicant’s subcontractor RAK Engineering excavated and altered the Applicant’s fibre installations on the understanding and confirmation that the 3<sup>rd</sup> Respondent had already compensated the land owners. A copy of the letter confirming the same was attached and marked D.
- 30 g) In order for Court to confirm the liability of the Applicant in as far as trespass on the suit land is concerned, it is necessary that the 3<sup>rd</sup> Respondent be added as a co-Defendant to the main suit.
- h) It is in the interest of justice that the 3<sup>rd</sup> Respondent be added as a co-Defendant so as to resolve all issues between the parties in the main suit.
- i) The Respondents will not be prejudiced in any way if National Water and Sewerage Corporation is allowed to participate in this matter.
- 35 j) The application has been made without inordinate delay.

5 This Court received an affidavit in reply from the 3<sup>rd</sup> Respondent. The other Respondents did not file any affidavits in Court.

### **3<sup>rd</sup> respondent's reply**

10 Mr. Aloysius Kaijuka, the Manager Legal Services of the 3<sup>rd</sup> Respondent objected to the prayers in the application and averred as follows;

1. The 3<sup>rd</sup> Respondent has never sued the Applicant as a trespasser.
2. The 3<sup>rd</sup> Respondent compensated the 1<sup>st</sup> and 2<sup>nd</sup> Respondents for an easement on their land on Block 223 Plots 4246 and 4247. Copies of the documents relating to the said settlement are attached and marked A.
- 15 3. That the land for which the Applicant is being sued is different from that where the 3<sup>rd</sup> Respondent obtained an easement.

### **Representation**

20 The Applicant was represented by M/s Shonubi, Musoke & Co. Advocates while the 3<sup>rd</sup> Respondent was represented by M/s Bluebell Legal Advocates.

### **Issue**

Whether the 3<sup>rd</sup> Respondent should be added as a party to Civil Suit No. 317 of 2020?

### **Resolution**

25 I have perused the application, the affidavit in support and the affidavit in reply. In brief, MTN Uganda, the Applicant seeks the addition of the 3<sup>rd</sup> Respondent, National Water and Sewerage Corporation, as a party to the main suit Civil Suit No. 317 of 2020.

The claim therein is that Mr. Dennis Kwizera and Mr. Deus Nsengiyunva, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents seek a declaration that MTN Uganda is a trespasser on the Plaintiff's land  
30 comprised in Kyadondo Block 223 Plot 4246 and Kyadondo Block 223 Plot 76 at Namugongo.

National Water Sewerage Corporation's Manager Legal Services Mr. Aloysius Kaijuka in his affidavit in reply opposed the application and contended that it has never sued MTN Uganda as a trespasser. And further that they compensated the 1<sup>st</sup> and 2<sup>nd</sup> Respondents

5 for an easement on their land on Block 223, Plots 4246 and 4247 as demonstrated by the settlement marked Annexure 'A'.

Mr. Kaijuka added that the suit land in Civil Suit no. 317 of 2020 is different from the land upon which the 3<sup>rd</sup> Respondent obtained an easement. I find that this averment that the land for which MTN Uganda is being sued, is different from that which National Water and  
10 Sewerage Corporation obtained an easement, is not true.

The fact is that the land comprised in Block 223 Plot 4246 is the subject of both this application and the main suit. And is partly the basis of the 3<sup>rd</sup> Respondent's compensation to the 1<sup>st</sup> Respondent.

In my view, this is sufficient grounds to allow this application to add the 3<sup>rd</sup> Respondent  
15 as a party to the main suit Civil suit no. 317 of 2020.

**Application is allowed with costs in the cause. Let the pleadings be closed within 30 days of the date of this ruling.**

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20 **Olive Kazaarwe Mukwaya**

**JUDGE**

**30<sup>th</sup> November 2022**

**Delivered by email to both Counsels.**