

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**(LAND DIVISION)**  
**MISCELLANEOUS APPLICATION NO.1698 OF 2022**  
**(ARISING FROM CIVIL SUIT NO.MC no. 98 OF 2022)**

**KYAGGWE COFFEE CURING (ESTATES) LTD::: APPLICANT**

**VERSUS**

**KAYONGO MOSES & 4 ORTHERS:::RESPONDENTS**

**Before: HON, JUSTICE MR.TADEO ASIIMWE**

**RULING.**

This application was brought by Notice of Motion under the provisions of Section 90& 98 of the Civil Procedure Act Cap. 71 and rule 10 (1) of the judicature ( judicial review) rules of 2009 & order 1 rule 10 (10) & 13 of the Civil Procedure Rules S.I 71-1 seeking for orders that the applicant be joined as a part in miscellaneous cause No. 98 of 202 as a respondent, and costs be provided for

**Grounds of the application:**

The grounds of the application as contained in the motion and in the affidavit in support of the motion of Mr. Muhhamed Albhai dated 14<sup>th</sup> September 2022 but briefly that;

1. That the applicant, formerly departed Asian is the owner of the suit land in issue described as FRV 3 FOLIO 13, kyaggwe Block 191 plot 14. Lwanyonyi estate mukono district as a registered proprietor since 1972, repossessed the suit land in 1991 and is n physical possession of the suit land to date.
2. That the applicant is a holder of a ruling of court in MA NO. 2310 of 2021 ( arising from civil suit no. 158 of 2015 Kyaggwe coffee curing (estates) ltd and



anor vs Mugeye Hammis Gingo and orthers requiring the 5<sup>th</sup> respondent to rectify the certificate of tittle for FRV 3, Folio 13 and reinstate it in to the original certificate of tittle.

3. That the 5<sup>th</sup> respondent in contempt of the said ruling and order instead entered the 1<sup>st</sup> to 4<sup>th</sup> respondents as registered proprietors on to the original tittle of the suit land.
4. That the 5<sup>th</sup> respondent illegally vacated the applicant's caveat on to the suit land lodged on 17/01/2022 to facilitate the illegal registration of the 1st to 4<sup>th</sup> respondent.
5. That the applicant has duplicate certificate of tittle to the suit land but that the 1<sup>st</sup> to 4<sup>th</sup> respondents hold special certificate of tittle illegally issued by the 5<sup>th</sup> respondent.
6. That the respondent are in court litigating over property that is owned and in possession of the applicant but the applicant id not party to those proceedings.
7. That it is just and equitable that the applicant be joined a party to this matter.

In reply the 1<sup>st</sup> -4<sup>th</sup> respondent through an affidavit sworn by the 2<sup>nd</sup> respondent ENGOLA SAM dated 13<sup>th</sup> October 2022 and stated that the presence of the applicant is not necessary to fully determine Miscellaneous cause no. 98 of 2022 as the 5<sup>th</sup> respondent was sued in his official capacity. That the application is misconceived, barred by law and should be dismissed.

However the 5<sup>th</sup> respondent conceded to the application and never filed a reply

### **Representation.**

The applicant was represented by Counsel Sarah Banenya & Counsel Albert Byamugisha while the 1<sup>st</sup> to 4<sup>th</sup> respondents were represented by counsel Tumwesiigire and Counsel Babu Hamis represented the 5<sup>th</sup> respondent

Counsel for both parties filed their written submissions as directed by this Court which I shall consider in this ruling.

In their submissions, the applicant submitted that the orders sought in miscellaneous cause no. 98 of 2022 relate to land which he is the registered





proprietor and is in possession of the same. That the orders sought affect his proprietary interest and that denying him a chance to defend the said application would be to deny him a fair hearing. That it is in the interest of justice that this application is allowed.

In reply, counsel for the respondents raised 3 preliminary objections and stated that the application is barred by resjudicata that the application is incurably defective as the applicant did not mention which side he wishes to be added. Further that the application was instituted without the company's legal authority. in the alternative he submitted that this application is misconceived as the applicant is not in any way related to any of the respondent's abs she is not an annexed arm of the 5<sup>th</sup> respondent. That her presence is therefore not necessary for effective and complete determination of MC no 98 of 2022.

I have carefully read and considered the pleadings, evidence and submissions of both parties which raise the following issues for determination by this Court;

1. Whether the application is barred by resjudicata.
2. Whether the application is defectively incurable as the applicant did not mention which side she wishes to be added.
3. Whether the application was instituted without the company's legal authority
4. Whether this application possesses grounds required of a party to be added as a party.

#### **Resolution of Issues.**

Issues 1&2 were argued together while 2 & 4 were argued independently. I shall resolve them in the same order,

#### **Issues 1 & 2**

- 1. Whether the application is barred by resjudicata.**
- 2. Whether the application is defectively incurable as the applicant did not mention which side she wishes to be added.**

**Section 7 of the Civil Procedure Act provides that:**

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*"No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties or between parties under whom they or any of them claim litigating under the same title, in a court competent to try the subsequent suit or the suit in which the issue has been subsequently raised and had been heard and finally decided by the court"*

*Counsel for the 2nd and 3rd defendants have given an explanation which I will allude to, that the expression former suit shall denote a suit which has been decided prior to the suit in question whether or not was instituted prior to it.*

*The doctrine was well summarized in the case of **James Katabazi & 21 others where the court stated that for the doctrine to apply;***

*The matter must be directly and substantially in issue in the two suits.*

*The parties must be the same or the same the parties under whom any of them claim, litigating under the same title.*

*The matter must have been finally decided in the previous suit.*

*Further still, the case of **Kamunye & others vS the Pioneer General Assurance Society Ltdd (1971 E. A 263** gives the test to be applied by court to determine the question of res judicata. It state:*

*"The test whether or not a suit is barred by res judicata seems to me to be – is the plaintiff in the second suit trying to bring before the court in another was and in the form of a new cause of action, a transaction which he has already put before a court of competent jurisdiction in earlier proceedings and which has been adjudicated upon. If so, the plea of res judicata applies not only to points upon which the first court actually required to adjudicate but to every point which properly belonged to the subject of litigation and which parties, exercising reasonable diligence, might have brought forward at the time. The subject matter in the subsequent suit must be covered by the previous suit, for res judicata to apply".*

*On this issue counsel for the applicant submission that the question in issue in this application was substantially determine in miscellaneous application no. 1543 of 2022 arising from miscellaneous application no 1434 of 2022 all arising from MC no. 98 of 2022.*





In this application, the applicant seeks to join MC 98/2022. In MA 1543 of 2022, the applicant sought to join MA 1434-2022. I wish to state that MC 98/2022 from which application arises and MA no 1434 from which MA no. 1543 arises, are /were essentially very different applications seeking different remedies. Further MA 1434 was dismissed on a preliminary point of law and not on merits. The respondent's argument that a decision on a preliminary point of law in one application where both the respondent and the applicants are parties affects another different application concerning the parties is misconceived. The idea of resjudicata is final adjudication on merits of the case that reappear in another matter requiring court determine the same question.

Unfortunately that is not the case in this application and MA 1543 of 2022 complained of by the respondent.

I therefore find no merit in this preliminary objection and the same is hereby over ruled.

On the issue of the applicant not mentioning which side he wants to join, I agree that the applicant did not expressly state which side he wants to join. However going by MC 98/2022 which he wants to join the orders sought are against his interest as a registered proprietor of land comprised in freehold register volume 3 folio 13 kyaggwe block 191 plot 14, Iwanyonyi estate which the respondents seek to be reinstated as registered owners. This was stated in the application in paragraph 2. By necessary implication, the applicant wants to defend his interest in that application. It would be savage for this court to think otherwise. Further for court to dismiss this application on such a minor omission would be to pay undue regard to technicalities against articles 126 of the 1995 constitution of Uganda.

I therefore find no merit in grounds 1&2/preliminary objections and the same are hereby over ruled.

### **ISSUE 3**

#### **Whether the application was instituted without the company's legal authority**

On this issue I have noted that counsel for the respondent made submissions on this issue stemming from nowhere. This point was not raised in the application but was merely smuggled in the submissions and not in the pleadings. The effect of that is



essentially departure from the pleadings which definitely denies opposite counsel a chance to respond to the same queries.

Ideally departure from pleadings is not a legal mistake that can be condoned by this court considering that the applicants has for a period of time in different matters litigated over the same subject matter with the respondents. It therefore goes without saying that the applicant had authority to represent the company as regards the subject matter and the respondents are estopped from denying the same.

Consequently this preliminary objection is equally over ruled.

**Issue 4: Whether the applicant is a necessary party to HC MC NO. 98/2022 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.

**Order 1 rule 10 (2) of the Civil Procedure Rules** provides that:

*"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, 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."*

For a party to be joined on ground that his 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 Muyinza, 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.

In the instant case, the applicant seeks to be joined as a respondent in miscellaneous cause no 98 of 2022.

In the said HCMC NO. 98 of 2022, the respondents /applicants seek an order of certiorari be issued quashing the decision of the respondent /commissioner land registration cancel the proprietorship of the respondents tittle , a withdraw of the applicants caveat, to reinstate the applicant in HCMC NO.98/2022 on tittle and a permanent injunction restraining the commissioner from cancelling the proprietorship of the applicants of land comprised in freehold register volume 3 folio 13 kyaggwe block 191 plot 14 , lwanyonyi estate and an order of mandamus to cause to registrar land commission to reinstate the respondent as proprietors of the land.

I am aware that the applicant is neither related nor annexed to the commissioner of land registration, a respondent in MC 98/2022 which the applicant in this case seeks to join.

However all the orders sought in the said application relate to land comprised in freehold register volume 3 folio 13 kyaggwe block 191 plot 14, lwanyoonyi estate registered in the names of the applicant for which the respondents were issued special certificate of tittle which were cancelled. Clearly the applicant who holds a duplicate certificate of tittle for the same land is an interested party. His interest would definitely be directly affected by the outcome of MC 98/2022.

In those circumstances, it would be appropriate and in the interest of justice that all matters touching the subject matter of the suit land be determined finally and completely, to avoid litigating over the same matters again.

This application is hereby granted allowing the applicant to join MC 98/2022 as a co- respondent.

Costs shall be in the cause.

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TADEO ASIIMWE

JUDGE.

27/10/2022

