

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(LAND DIVISION)
MISCELLEANOUS APPLICATION NO. 1800 OF 2022
(ARISING FROM C.S NO. 220 OF 2021)

- 1. SSEMWANGA ASUMANI::::::::::::::::::::::::::::::::: APPLICANT**
- 2. FLORENCE NADAMBA KANYIKE**
- 3. NTALO CHRISTOPHER JINGO**
- 4. SSEKANDI ISA**
- 5. REGISTRA OF TITTLES**

VERSUS

ERUSA NAMBALIRWA NABATEEZI

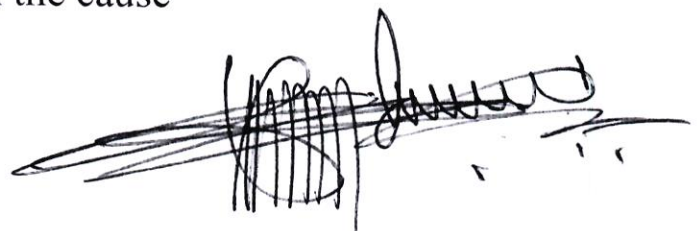
& 4 ORTHER::::::::::::::::::::::::::::::::: RESPONDENTS

BEFORE: HON. MR JUSTICE TADEO ASIIMWE.

RULING

The Applicant brought this application by way of Chamber Summons under Order 6 Rules 19 & 31 and order 1 rule 10 & 13 of the Civil Procedure Rules (CPR) . Seeking orders that:

1. The applicants be granted leave to amend their plaint to avoid multiplicity of proceedings before this honorable court.
2. The costs of this application be in the cause



The application is supported by an affidavit sworn by SSEMWANGA ASUMANI, the 1st respondent and NAKIBONEKA NURU the 3rd Applicant. The grounds of the application are there in set in the affidavits and the chamber summons, but briefly that:

1. A suit by the applicants/plaintiffs against the respondents/defendants is pending before this honorable court.
2. New information since the filing of the pleadings has arisen that ought to be included before trial commences.
3. Some errors were drafted in to the pleadings due to mistake of counsel and need to be amended to enable a determination of the real questions in controversy between the parties.
4. As a result of the grant of this application, a multiplicity of proceedings will be prevented in this honorable court and the real questions in controversy between the parties will be determined.
5. No justice will be caused to the respondents/ Defendants by the amendments to the pleadings, and any injury that may be caused can be compensated for in costs.
6. The respondents/defendants have attempted to take possession and open boundaries of the applicants/plaintiffs parcel of land and the suit land I in danger of being damaged and /or wasted.
7. The applicants/plaintiffs are in danger of being evicted from the suit land by the respondents/defendants.

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8. The applicants/plaintiffs shall suffer irreparable damage and loss if they are not granted leave to amend their pleadings.
9. The balance of convenience is in favor of the issuance of an order for leave to amend the applicant's pleadings.
10. It is in the interest of justice and fairness that an order for leave to amend is granted to the applicants.

Representation.

At the hearing, the Applicants were represented by Counsel Hamuza Sekide holding brief for counsel Walyemera while the Respondents were represented by David Lubogo and counsel Atwiine. All counsel were directed to file written submissions which they filed.

In his written submissions, counsel for the applicant argued that this application was brought in good faith. That as a result of the grant of this application, multiplicity of proceedings will be prevented in this honorable court and the real questions in controversy between the parties will be determined. He further submitted that the amendments will not in any way prejudice the defendant's respondents and neither will they cause any irreparable damage/injury if they are not granted leave to amend their pleadings.

On the other hand, the 1st & 2nd respondent submitted that the applicant had earlier filed similar applications for amendment in the same court that were dismissed for want of prosecution. That filing of multiple

applications is a delay tactic and a sign of bad faith intended to prejudice the respondents. He further submitted that apart from the prayer to substitute the 5th respondent, the effect of the other sought amendments is introduction of a new cause of action which is unacceptable.

RESSOLUTION

Order 6 Rule 19 of the CPR empowers the Court to grant leave to a party to amend their 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.”

The principles that have been recognized by the courts as governing the exercise of discretion to allow or disallow amendment of pleadings have been summarized in a number of decided cases to include the following:

a. *Amendments are allowed by the courts so that the real question in controversy between the parties is determined and justice is administered without undue regard to technicalities.*

b. *An amendment should not work an injustice to the other side. An injury that can be compensated by an award of damages is not treated as an injustice.*

c. *Multiplicity of proceedings should be avoided as far as possible and all amendments which avoid such multiplicity should be allowed.*

d. *An application that is made malafide should not be granted.*

e. *No amendments should be allowed where it is expressly or impliedly prohibited by any law.*

g. *The court shall not exercise its discretion to allow an amendment which has the effect of substituting one distinctive cause of action for another.*

See: Gaso Transport Services (Bus) Ltd vs Obene (1990-1994) EA 88; Mulwooza & Brothers Ltd vs Shah & Co. Ltd, SCCA No. 26 of 2010; and Nicholas Serunkuma Ssewagudde & 2 Others vs Namasole Namusoke Namatovu Veronica HCMA No. 1307 of 2016.

Counsel for the Applicant in his pleadings and submissions was alive to the above principles as set out and implored the Court to find that the Applicant has satisfied the grounds for grant of leave to amend applicant's pleadings.

In this application, the applicants seek to amend the plaint to substitute the 5th defendant with commissioner for land registration. They also seek to amend paragraph 6, d, e, 8, 9, f & orders in f and h.

I do not find any prejudice likely to be suffered by the Respondent if the Application is granted as regards the sought amendment to substitute the 5th defendant with commissioner for land registration who is the right party in the circumstances. I am further satisfied that 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.

In the circumstances therefore, I am satisfied that this application has not been brought in bad faith and has no potential of working an injustice or prejudice against the Respondents to the extent of substituting a party since the hearing is still going on.

Accordingly, the Applicant has satisfied Court that he is entitled to be granted leave to amend its plaint in the main suit and substitute the 5th respondent with the commissioner land registration.

However on the second prayer to amend paragraph 6, d, e, 8, 9, f & orders in f and h, the applicants seek to amend there earlier prayers to wit, a declaration that the 2nd and third respondents obtained there tittles through fraud, that the suit land belongs to the plaintiffs as the rightful owner of the kibanja and a permanent injunction for trespass. The main cause of

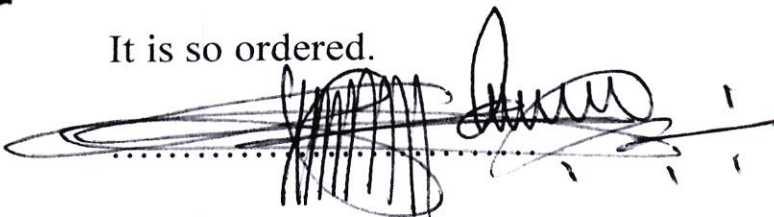
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action here in is an action for trespass. To abandon it or to amend the same would be to introduce a different cause of action which is not acceptable and would prejudice the respondents. I shall therefore decline to allow the second amendment.

The application partly has merit and the same is hereby partly allowed with orders that:

1. The Applicant is granted leave to amend his plaint in Civil Suit No. 220 of 2021 to substitute the 5th respondent with commissioner land registration.
2. The Applicant shall file the amended plaint and serve the respondents by Monday, 21/11/2022.
3. The second prayer to amend paragraph 6, d, e, 8, 9, f & orders in f and h, is not granted.
3. The costs of this application shall abide the outcome of the main suit.

It is so ordered.

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TADEO ASIIMWE

JUDGE

18/11/2022.