

THE REPUBLIC OF UGANDA  
AT THE HIGH COURT OF UGANDA AT MPIGI  
(LAND DIVISION)

MISCELLANEOUS APPLICATION NO. 225 OF 2021

5 ARISING FROM CIVIL SUIT NO. 16 OF 2016

ORIGINALLY CIVIL SUIT NO. 457 OF 2015

BETTY BUKAYANIRWA NATEMBO.....APPLICANT

VERSUS

THE ADMINISTRATO GENERAL

10 (Suing through their lawful attorney

Dr. Fr. Lawrence Kanyike. Farasiko

Ndagga and Kasasa Joseph).....RESPONDENT

BEFORE: HIS LORDSHIP HON. JUSTICE OYUKO ANTHONY OJOK, JUDGE

15 **Ruling**

The applicant brought the instant application under **Order 1 Rules 3** and **13, Order 52 Rules 1, 2** and **3** of the Civil Procedure Rules, and **Section 98** of the Civil Procedure Act against the respondent. The applicant seeks to be heard on orders that;

- 20 1. The applicant Betty Bukayanirwa Natembo be added as a defendant in Civil Suit No. 16 of 2016 formerly Civil Suit No. 457 of 2015 and all applications arising there from.  
2. Costs of the application be provided for.

25 The application was supported by an affidavit sworn by the applicant which laid out the grounds briefly.

The respondent opposed the application through the affidavit sworn by Joseph Kasasa.

An affidavit in rejoinder to support the application was sworn by Emmanuel Mugisa. However; I will not reproduce the contents of the said affidavits here.

### Representation:

Mr. Ogomba Issa together with Paul Asaba appeared for the applicant while Mr. Bamwite Edward represented the respondent. Both sides made oral submissions.

### Submissions:

- 5 It was submitted for the applicant that she is the registered proprietor of Block 85 Plot 246 land located at Bulansuky, Mawokota measuring approximately 16.2060 hectares as per the Certificate of Title attached to her affidavit in support of the application and the search report. That the respondent is praying for the same to be cancelled as per his claim. Counsel cited **Order 1 Rule 10 (2)** of the Civil Procedure Rules which provides as follows;

15 *"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".*

And the case of **Departed Asians Property Custodian Board v. Jaffer Brothers Ltd SCCA No. 8 of 1998** where JSC held that;

25 *"For a person to be joined on the ground that his presence in the suit is necessary for effectual and complete settlement of all questions involved in the suit one or two things has to be shown. Either it has to be shown that the orders, which the plaintiff seeks in the suit would legally affect the interests of that person, and that it is desirable, for avoidance of multiplicity of suits, to have such person joined so that he is bound by the decision of the court in that suit. Alternatively, a person qualifies, (on application of a defendant) to be joined as a co-defendant, where it is shown that the defendant cannot effectually set up a defence he desires to set up unless that person is joined in it, or unless*  
30 *the order to be made is to bind that person."*

Counsel went on to submit that the orders sought in the plaint directly affect the applicant since there is cancellation of her title involved. Thus, the applicant should be added as a party to the main suit.

In reply counsel for the respondent submitted that this is not a genuine application and Semakula Sulait has been presented in Court since 2015 as the registered proprietor. That the applicant has no interest in the suit property, therefore should not be added as a party and cited the case of **Major Roland**  
5 **Kakooza v. Attorney General and Another, Miscellaneous Application No. 665 of 2003** in support of his argument.

Counsel submitted that the applicant was a non-fictional person intending to delay the entire proceedings, that at all proceedings, the title was in the name of Semakula Sulait not the applicant until December 2021 when the applicant  
10 surfaced. Counsel noted that this was a delaying tactic and the application should be dismissed with costs.

In rejoinder counsel for the applicant submitted that there is a dispute on ownership and it can only be resolved through the addition of the applicant as a party after the issue of ownership is resolved through trial and evidence is  
15 adduced by all parties. And that the applicant has a right to be heard otherwise the main suit proceeding without her as a party will be prejudicial.

**Analysis of court:**

I have carefully considered the submissions of both parties and the attachments to their affidavits. Indeed the applicant is also a registered proprietor of Block 85 Plot 246 as per the certificate of title attached to her affidavit in support of the  
20 application and the search report attached to the affidavit in rejoinder. Refusing to add her as a party will be prejudicial as the main suit also affects her interest in the suit property. The issue at hand is one on ownership of land which is a very sensitive matter that ought to be heard with all the interested parties having  
25 been given audience.

I find that the case of **Major Roland Kakooza v. Attorney General and Another, Miscellaneous Application No. 665 of 2003** as cited by the respondent is distinguishable from the instant case and the addition of the applicant as a party is necessary. If the application is not granted it will prejudice the applicant as the  
30 main suit will be heard without her adducing any evidence yet she has interest in the suit property.

Court orders that on the hearing of the main suit' counsel for the applicant avails all documents of travel to USA, of the applicant and all other supporting

documents. Court also wants the applicant present the day of the hearing in person for the hearing.

I accordingly allow the application in interest of justice and fair hearing. Costs in the cause.

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**OYUKO ANTHONY OJOK**

**JUDGE**

**28/03/2022**