

THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT KAMPALA  
LAND DIVISION  
CIVIL SUIT NO. 183 OF 2015

- 5
1. MUWONGE IOANNIS ..... PLAINTIFFS  
2. NABUNJJE PROSCOVIA  
3. NAMATOVU JACKIE  
10 4. NAMATOVU TOPISTA  
5. NAMUYIGA MARY  
6. NALUBEGA PERCY  
7. NALUBEGA FLORENCE  
8. NABUKENYA HARRIET  
9. NAMULINDWA LYDIA  
15 10. NAYIGA CHRISTINE  
11. KAMOGA RICHARD  
12. MUWONGE FRED  
13. MATOVU ROBERT  
14. LUBEGA EDWARD  
20 15. MUWONGE ROGERS  
16. JINGO ABDULLAH  
17. LULE GODFREY  
18. YIGA VOCENT  
19. LUBEGA DAUDI (*Biological children & Beneficiaries of the estate of the late Lubega John Baptist*)

VERSUS

- 25
1. LWANYAGA FRANK  
2. NAKANWAGI JENNIFER  
30 3. JEREMIAH MATOVU  
4. KIGOZI JAMES ..... DEFENDANTS  
5. MULINDWA DANIEL  
6. NANSAMBA ROSE  
7. SEBAGALA ALI  
35 8. THE COMMISSIONER, LAND REGISTRATION

Before: Lady Justice Alexandra Nkonge Rugadya:

RULING ON PRELIMINARY OBJECTION TO THE AMMENDED OF THE PLAINT.

Facts:

By way of a brief background on 25<sup>th</sup> August, 2014 the 1<sup>st</sup> defendant Frank Lwanyaga and the  
40 plaintiff, John Bosco Lubega entered into a transaction under which the 1<sup>st</sup> defendant claims to  
have bought the land comprised in **Kibuga Block 12, plot 385** measuring **0.24 of an acre at**  
**Mengo (Kisenyi), (suit land)** at a consideration of **Ugx. 800,000,000/-**.



The present suit was later filed against the 1<sup>st</sup> defendant in 2015, vide **Civil Suit No. 183 of 2015**, subsequent to which a consent was entered into between the deceased represented by two of his children who had purportedly obtained powers of attorney from him.

Following his death, his children on 4<sup>th</sup> February, 2020, (the 1<sup>st</sup> to 13<sup>th</sup> plaintiffs) filed **MA No. 1706 of 2020**, seeking a review of the consent judgment on the ground that it had been fraudulently obtained.

Court granted them a hearing and later allowed them to file an amendment to the plaint which they did on 21<sup>st</sup> October, 2021. The plaintiffs who were joined by together 13 were joined by the 14<sup>th</sup>-20<sup>th</sup> plaintiffs filed and served the amendment to this suit. Other defendants were added and the amended defences were in turn also filed and served.

**Preliminary Objections:**

When this suit came up for hearing on 14<sup>th</sup> December, 2021 counsel for the 1<sup>st</sup> defendant raised some preliminary objections against the amended plaint; the joinder of parties and issue of the plaintiffs' locus to join the suit.

He raised other issues which counsel for the plaintiffs however objected to as they went to the merits of the entire case and dealt with matters that had already been ruled on by this court in **MA No. 1706 of 2020**. Accordingly, the arguments were baseless and a waste of court's time.

His point was the amendment to the plaint was necessary to enable court adjudicate and determine the real issues in controversy between the parties. That the areas of contention related to the amendment of the plaint, legal representatives of the late John Baptist Lubega and joinder of parties to the original plaint.

I could not agree more with his summarized view on this matter. I will therefore restrict my decision on those three areas:

**Consideration of the issues by court:**

I have studied the pleadings and the points raised in the submissions by the parties, and I need not reproduce them in this ruling.

The gist of the defendants' claim as I understood it is that the amendments that were introduced by the plaintiffs introduced a fresh cause of action, different from the one as intended under the main suit.



Secondly, that the plaintiffs did not seek prior leave of this court before joining other parties to the suit; and thirdly they neither had the interest in the suit property nor the *locus standi* to join the suit. Since these issues are all interrelated I will deal with them jointly.

It is not in contention that **Civil Suit No. 183 of 2015** was originally filed against Mr. Lwanyaga Frank, the 1<sup>st</sup> defendant by John Baptist Lubega, the father of the plaintiffs and to the 2<sup>nd</sup>-6<sup>th</sup> defendants in the amended plaint.

The plaintiff however died on 4<sup>th</sup> February, 2020 and some of the plaintiffs filed an application for a review of the consent which through his attorneys he had purportedly signed with the 1<sup>st</sup> defendant, disposing off the suit land. The said application for review was allowed by this court.

In the amended suit, the plaintiffs seek to challenge the consent and among other documents and transactions, the authenticity of the powers of attorney issued by their father to the signatories of the consent.

At the initial stage of the hearing the plaintiffs, none of whom had been parties to the original suit, but several of whom had been parties to the review application, applied to amend the suit under **Order 6 rule 19 of the CPR**.

The said rule provides that a court may at any stage of the proceedings allow either party to alter or amend his/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 question in controversy between the parties.

In line with the above rule, the principles recognized by courts as governing that discretion exercisable by court have been summarized in a number of cases, and these boil down to: real questions in controversy to be determined between the parties; and the fact that justice must be administered without undue regard to technicalities.

Thus an amendment should not to work an injustice to the other side. As far as possible, all amendments which avoid multiplicities should be allowed. Finally, that an application that is made *malafide*, or which is implied or expressly prohibited by law should not be granted.

The court however would be barred from exercising that discretion if the intended amendment has the effect of substituting one distinctive cause of action for another. (**GASO Transport Srvices (Bus) Ltd vs Obene (1990-1994) EA 88; Mulwooza & Brothers Ltd vs Shah & Co. Ltd SCCA No. 26 of 2010**).

**Chiterly and Rao in their Commentary on the Indian Civil Procedure Code** which is in *paramateria* to our **Civil Procedure Rules, at page 2218**, gives reinforcement to the general





rule that a court will not in the exercise of its discretion allow an amendment converting a suit of one character into a suit of another character; or sanction the altering or substitution of one distinct cause of action for another or change of the subject matter of the suit.

In its ruling dated 7<sup>th</sup> October, 2021, this court had this to say:

5            *I have duly noted that this is a disjointed family and all pending matters concerning the appointment of administrators and distribution of property ought to be dealt with and/or resolved through the family court. This court should therefore restrict itself to the validity of the transaction between the 1<sup>st</sup> defendant (not a member of the family) and the deceased....*

10           *In the premises the plaintiffs are required to file an amendment to the plaint and serve the defendants by 21<sup>st</sup> October, 2021.....*

I have carefully perused the original plaint filed by the late John Bosco Lubega as well as the amended plaint filed by his children in 2021.

In the amended suit, the plaintiffs seek orders and declarations that:

15           a). *the late Lubega John Baptist Lubega has never sold the suit land comprised in **Kibuga Block 12 Plot 385 land at Mengo Kisenyi village**, to the 1<sup>st</sup> defendant, neither has the deceased ever received consideration for the same from the 1<sup>st</sup> defendant.*

b). *the purported sale of land agreements between the 1<sup>st</sup> defendant and the late Lubega John Baptist listed hereof are fictitious, fraudulent and of no legal effect.*

20           i.    *the purported sale of land agreement between the deceased Lubega John Baptist and 1<sup>st</sup> defendant dated 25<sup>th</sup> August 2014.*

ii.    *Purported acknowledgment of receipt between the deceased and 1<sup>st</sup> defendant dated 28<sup>th</sup> August 2014.*

25           iii.    *Another acknowledgment between the deceased and 1<sup>st</sup> defendant dated 6<sup>th</sup> October 2014.*

iv.    *Acknowledgment of receipt between the deceased and the 1<sup>st</sup> defendant dated 1<sup>st</sup> December 2014, 5<sup>th</sup> January 2015, 25<sup>th</sup> May, 2016; 15<sup>th</sup> December 2016 and 12<sup>th</sup> June 2016.*

30           v.    *Any agreement and or acknowledgment executed by and/or at the behest of the defendants in relation to land in dispute.*

c). *A declaration that the 8<sup>th</sup> defendant's acts of entering the 1<sup>st</sup> defendant's name on the Late Lubega John Baptist's certificate of title, which was encumbered by the late's caveat,*



*1<sup>st</sup> plaintiff's caveat and Nassuna Resty's caveat inclusive 2 court orders, forbidding the registration of any person as transferee or proprietor thereof is illegal and fraudulent.*

*d). A declaration that **Block 12 Plot 385 land at Mengo Kisenyi** belongs to the deceased Lubega John Baptist's estate.*

5 *e). A declaration that the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, and 7<sup>th</sup> defendants have no legal, beneficial, or equitable interest in the suit property comprised in **Kibuga Block 12 Plot, 385 land at Mengo Kisenyi**, which has since been registered illegally into the name of the 1<sup>st</sup> defendant by the 8<sup>th</sup> defendant.*

10 *f). A declaration that the 1<sup>st</sup> defendant's name was registered illegally on the late Lubega John Baptist's title.*

*g). A declaration that defendants' actions in dealing with suit land comprised in Kibuga **Block 12 Plot 385 land at Mengo Kisenyi** against the late Lubega John Baptist and beneficiaries of his estate are unlawful and fraudulent.*

15 *h). An order for cancellation of the 1<sup>st</sup> defendant's names as proprietor from the certificate of title and re-straining the names of the late Lubega John Baptist as proprietor.*

*i). A permanent injunction restraining the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, and 7<sup>th</sup>, defendants and their agents assignees and succession in title from claiming ownership or entering upon, interfering with and in anyway dealing with or in the suit land.*

*j). General damages*

20 *k). Exemplary damages*

*l) costs of the suit.*

In paragraph 3 of the original plaint the plaintiff's claim against the defendant was:

25 *a). a declaration that the plaintiff has never sold the suit land comprised in **Kibuga Block 12 Plot 385** at Mengo Kisenyi Village to the defendant and neither has he ever received consideration for the same from the defendant.*

*b). A declaration that the actions of the defendant in dealing with the suit land comprised in **Kibuga Block 12 Plot 385 at Mengo** are unlawful and fraudulent.*

30 *c). An order that the Commissioner for Lands Registration removes the Caveat, which was lodged on the plaintiff's certificate of Title by the defendant.*



In *paragraph 6 thereof*, the particulars of fraud were:

a). *the defendant lodged a caveat on the suit land when he is not the owner or when he is not a bonafide purchaser for value of the suit land and no interest whatsoever in the suit land.*

b). *the defendant purported to have bought the suit land from the plaintiff whereas not.*

c). *the defendant gave a warning to the tenants on the land to vacate it or risk eviction without authority of the plaintiff.*

10 The deceased purportedly denied ever having sold the land comprised in **Block 12 plot No. 385 at Mengo Kisenyi village** to the 1<sup>st</sup> defendant, the sole defendant in that suit. He also denied ever having received any consideration from him in respect of that plot.

15 In his written statement of defence filed 13<sup>th</sup> May, 2015 the defendant however refuted those claims and averred that he had bought the suit land in the presence of the plaintiff's advocates and his adult children: Jeniffer Nakanwagi and Matovu Jeremiah who also witnessed the land sale agreement.

He therefore claimed to be a *bonafide* purchaser and maintained that payments had been made to the deceased, in the presence of his children, a claim which the plaintiffs in the amended suit however sought to challenge. The said children were added as defendants in the amended suit.

20 In the original suit, the following were the issues raised:

1. ***Whether the first defendant had a right to lodge a Caveat on the Certificate of Title to the suit land.***

25 2. ***Whether the first defendant bought the suit land from the plaintiff, John Baptist Lubega.***

3. ***Whether the first defendant was a bonafide purchaser for value in respect of the suit land.***

30 The 1<sup>st</sup> defendant also presented a land sale agreement dated 25<sup>th</sup> August, 2014 which was purportedly signed by the deceased, in the presence of his children and counsel from **M/s Sseguya & Co. Advocates.**

In the said agreement, he claimed to have paid **Ugx 800,000,000/=**. He also presented various receipts to prove that the deceased had acknowledged the various sums remitted to him in several installments.





It is also a fact that on 1<sup>st</sup> April, 2015, the deceased had purportedly filed **Civil Suit No. 183 of 2015**. He is later alleged to have made a disclaimer on 18<sup>th</sup> May, 2016 to the effect that he never filed that suit.

On 24<sup>th</sup> May, 2016, however, the deceased entered into the now disputed consent with the defendant in settlement of that suit. Two of his children, Jennifer Nakanwagi (1<sup>st</sup> defendant) and Daniel Mulindwa (5<sup>th</sup> defendant), purporting to hold powers of Attorney donned to them by the deceased on 11<sup>th</sup> May, 2016, signed the consent.

It was witnessed by two of their siblings and his counsel Ali Sebbagala who was also added as one of the defendants in the amended suit on account of the role he is said to have played in the transactions.

Following the death of the plaintiff, the 1<sup>st</sup> to the 13<sup>th</sup> plaintiffs filed **Miscellaneous Application No. 1706 of 2020**: an application for a review of the said consent. Court after perusing the pleadings and submissions in which they raised a number of triable issues, decided to give the applicants/plaintiffs a hearing and thereupon allowed them to amend their pleadings which they did.

The defendants' counsel however submitted that the amended plaint had altered the cause of action in the original plaint; added several new parties without first seeking leave of court. Indeed as submitted, there is also no disputing the fact that when they amended the plaint to allow them join as parties to the original suit they had done so in their individual capacities; and had done so before securing letters of administration for the estate of their father.

In short therefore, none of the plaintiffs joined the suit as a nominated legal representative of the estate of their father in the amended plaint. It is not clear how many children or other beneficiaries of the deceased were not joined as parties to the amended suit.

But what is clear is that none of those who were made parties in the amended plaint had the authority to represent the said beneficiaries under the estate. Regardless of whether or not the suit was amended, that to court was a mandatory legal requirement which the plaintiffs failed to take into account.

The argument therefore that court had the discretion to appoint the legal representation to continue with the suit; and that the plaintiffs had the same right to relief against the defendant in the original suit and as such entitled to the reliefs sought under the amendment seemed to ignore the fact that it had to be the plaintiffs' family initiative to nominate and then move court to appoint the legal representatives, a procedure that they did not follow.



The law governing the above process is clear and unambiguous. **Order 24 (1) of the CPR** provides clearly that the death of a party does not cause a suit to abate if the cause of action survives or continues.

5 **Order 24 rule 3 (1) of the CPR** further provides that where a sole plaintiff dies and cause of action survives or continues, the court can upon application *made for that purpose* cause the legal representative of the deceased plaintiff to be made a party, and shall proceed with the suit.

The substitution must first be ordered before the court can *proceed or continue* to hear the case.. The application, as per **order 24 rule 12 of the CPR** is to be made by chamber summons and evidently the procedure as laid out under that rule is mandatory.

10 Similarly in **section 222 of the Succession Act** court has powers to appoint a nominee, limited for the purpose of representing the deceased in that suit until the suit is disposed of. By necessary implication, the only way the plaintiffs could have continued with the original suit would have been to seek prior leave of court to appoint a representative, nominated by the family to continue with the suit.

15 The order made by this court to amend the pleadings did not allow the plaintiffs to add other parties. It was procedurally wrong for them to assume that the order was an automatic gate way to add every other party as they wished. The additions substantially altered the suit from its original form.

The requirement to seek prior leave of court therefore equally applied to joinder of other parties  
20 to the amended suit, which is essentially governed by **Order 1 rule 10 (2) of the Civil Procedure Rules**. The amendment of the pleadings and addition of parties are obviously governed by separate rules.

In respect of the joinder of parties, **Order 1 rule 10 (2)** states:

25 ***"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***  
30 ***upon and settle all questions involved in the suit, be added"***

The joinder of parties in the peculiar circumstances of this case could only have been achieved upon prior application to court by the plaintiffs to achieve that objective.

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The procedure for bringing such an application is provided for under **Order 1 rule 13**. It must be established that the party to be joined has a high interest in the case and that the orders sought in the main suit would directly legally affect the party to be added.

Thus in the case of **Departed Asians Property Custodian Board v Jaffer Brothers Ltd [1999] E.A 55**, court observed that 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. (**Gokaldas Laximadas Tanna v Store Rose Muginza H.C.C.S No. 7076 of 1997 [1990-1991] KALR 21**).

There is no doubt that the administrator or appointed legal representative of the estate of John Bosco Lubega held a huge stake in this suit as the trustee of the estate.

Rules are hand maidens of justice and in my view, the requirement for prior leave of court before adding other parties or altering the cause of action during the course of the trial to suit the plaintiff's claim was designed for an objective which had originally not been intended by their late father.

The amendment in its form appeared as another suit, or a child of the original suit: with its own a distinctive cause of action. These were not mere technicalities that **article 126 (2)(e) of the Constitution** was intended to resolve.

Thus not only were new parties added without court sanctioning. It also raised new facts, issues and prayers which had not been raised in the original suit. Save for the 1<sup>st</sup> defendant, the rest of the parties who had been added were new in relation to a matter that ought to have been restricted to the validity of the consent between two individuals, one of whom had since died. He was not represented in the amended plaint.

In its present form, the amendment not only therefore substantially alters the original cause of action but is also filed by persons who had no authority or *locus* to file the suit on behalf of the estate of the deceased, who had been a party to the suit.

**In Mulwooza & Brothers Ltd vs N Shah & Co. Ltd, Civil appeal no. 26 of 2010** court had this to say:

***If a pleading does not disclose .... or locus standii the court is not required to inquire into merits of the main case. It would be action in futility. Courts are not meant to award moot judgments. The danger also lies in condemning a party who***

***should not have been condemned. (CRANE Bank Ltd [in receivership] vs Sudhir Ruparelia and anor CACA No. 320 of 252 of 2019).***

It is emphasized that the unfailing requirement is that *locus standi* to institute a suit, by whatever mode prescribed must be established at the time the suit is filed. This is done by expressly pleading facts that give the plaintiff the legal standing to institute the suit.

It should not be left to the court to guess where a plaintiff derives the *locus standi* to file the suit. It must be expressly clear on the facts pleaded; particularly those that give rise to the cause of action in the plaint or counterclaim. The suit in its form as amended, is therefore vexatious to the 1<sup>st</sup> defendant.

This court also in passing noted that the deceased and 1<sup>st</sup> defendant had been jointly sued by one Nassuuna Resty in 2016, after the consent order was made. The ruling was obtained in their favor vide: **MA No. 1199 of 2016** on 6<sup>th</sup> June, 2018.

It is to be noted that in that ruling, court declared the consent judgment lawful and enforceable. The deceased prior to his demise in 2020 and his children did not challenge the orders made in that application. The deceased did not challenge the consent order when he was still alive.

The matter only came up after his death, some six years after the sale agreement. The above would show therefore that by the time he passed on, the property in issue had already ceased to be part of the estate, the 1<sup>st</sup> defendant had already been issued with a title, and the deceased never challenged his registration.

As correctly submitted, in its ruling of 16<sup>th</sup> June, 2021 vide: ***in Miscellaneous Application No 1706 of 2020*** this court gave the plaintiffs a hearing which gave them opportunity to present its evidence on the issue of whether or not there was a valid sale of the suit land to the 1<sup>st</sup> defendant.

In so doing and obviously in error, this court surpassed its own ruling under **MA No. 1199 of 2016** by which the consent order had already been declared lawful and enforceable. Since no party took the trouble to have it discharged, it therefore remained binding not only to this court but also as a judgment *in rem*.

In the South African case: ***Nicholas François Martemns & others vs SA National Parks, case No. 0117***, the court ruled that a judgment *in rem* binds all parties even when they are not parties to the proceedings.

They are stopped from averring that the status of persons or things, or the right to title to property are other than what the court has by its judgment declared it to be.





Under **Order 7 rule 11 (d) and (e) of the CPR** court ought to reject (as I now hereby do) a plaint which is barred by law and one that may be found to be vexatious to the defendant.

It is on those grounds as enumerated above that I therefore uphold the objections raised by the 1<sup>st</sup> defendant, with costs to the defendants.


- 5 The suit is accordingly dismissed.

  
**Alexandra Nkonge Rugadya**

**Judge**

**25<sup>th</sup> March, 2022**

Delivered via email

  
25/3/2022