

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(LAND DIVISION)

MISCELLANEOUS APPLICATION NO.399 OF 2023

(Arising from Civil Suit No.656 of 2020)

NAMANDE FLASIKA NAKIBUUKA::::::::::::::::::::::::::::::::APPLICANT

VERSUS

1. MKS LTD

2. DEANNE THOMPSON TARAKABAJWISA

3. PROBUILT CONSTRUCTION FIRM LIMITED::::::::::::::::RESPONDENTS

Before: Lady Justice Alexandra Nkonge Rugadya.

Ruling.

Introduction:

The applicant through her the firm of ***M/s Kayongo Jackson & Co. Advocates*** brought this application under the provisions of ***section 98 of the Civil Procedure Act cap.71, and Order 1 rules 10 (2) & 13, & Order 52 rules 1 & 2 of the Civil Procedure Rules SI 71-1***, seeking orders that the applicant be joined as a party cum defendant to ***Civil Suit No.656 of 2023*** and all applications arising therefrom; and that costs of the application be provided for.

Grounds of the application:

The grounds of the application are contained in the affidavit in support deposed by the applicant.

Briefly that at the time of her death, the late Lusiya Nabawanuka Namutebi (*hereinafter referred to as 'the deceased'*), the applicant's aunt was the registered



proprietor of the land comprised in **Block 216 plot 2500 measuring approximately 2 acres situate at Buye Ntinda** (hereinafter referred to as 'the suit land') which is the subject of **Civil Suit No.656 of 2020**, having purchased the same to be used as a burial ground; and that the deceased was indeed buried thereon.

That sometime in February 2023, the applicant learnt that the respondents instituted **Civil Suit No.656 of 2020** seeking various orders including an order for cancellation of Nabuuma Justine Lusiya as the registered proprietor of the suit land, and reinstatement of the respondents as the registered proprietors of land comprised in **Kyadondo Block 216 plot 4478 & 4477** in their capacity as *bonafide* purchasers for value, without notice of fraud.

That the applicant being the heir and one of the beneficiaries of the late Lusiya Nabawanuka Namutebi claims an interest in the land claimed by the respondents; and that any orders sought by the respondents are not only likely to affect the applicant's interest in the suit, but also tantamount to depriving her of her interest in the deceased's estate.

That the 2nd defendant in **Civil Suit No.656 of 2020** who is not known to the family purporting to be the administrator of the deceased's estate was fraudulently granted letters of administration.

That since the 1940s, the suit land has been taken care of by the late Nsubuga as burial grounds until sometime in 2011 when a one Mugabi Samuel and the respondents started claiming interest therein and that they have worked in concert on their illegal scheme to disentitle the deceased's bonafide and lawful beneficiaries.

That while the respondents further embarked on fraudulently and illegally registering the suit land in their names, the said Nabuuma Justine Lusiya is neither daughter nor is she a descendant to the late Nabawanuka Namutebi as she claims in the grant.



That in furtherance of their illegalities, the respondents caused the subdivision of **Block 216 plot 2500** and created **Kyadondo Block 216 plot 4478 & 4477** and instituted **Civil Suit No.656 of 2020** claiming to have bought the land administered by Nabuuma Justine Lusiya yet the 2 acres remained for the beneficiaries of the deceased's estate.

Upon discovery of the illegalities by the respondents and their accomplices, the applicant now seeks to be joined as a party to **Civil Suit No.656 of 2020** so that the record can be straight.

This application is intended therefore to protect her beneficial interest in the suit land; avoid multiplicity of proceedings and that the applicant ought to be heard in regard to her interest in the suit land; and that this court has jurisdiction to add a party to a suit before it at any stage of the proceedings to enable court effectually and completely deal with all matters before it.

Furthermore, that it is in the interest of justice that the applicant is joined as a defendant in **Civil Suit 656 OF 2020** to safeguard her beneficial interest in the land.

Decision of court:

None of the respondents filed an application to oppose the prayers sought in this application, each having been served with court process as directed by this court.

It is now settled law that where facts are sworn to in an affidavit and they are not denied by the opposite party; the presumption is that they are accepted. (See: **Makerere University versus St. Mark Education Institute Ltd. & Others [1994] KALR 26; Eridadi Ahimbisibwe versus World Food Programme & Others [1998] KALR 32; Kalyesubula Fenekansi versus Luwero District Land Board & Others; Miscellaneous Application No. 367 of 2011)**

It would be therefore 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, and since none of the respondents did not object to this application, this court is inclined to grant this application.

This application is therefore granted with no orders as to costs.

I so order.

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Alexandra Nkonge Rugadya

Judge

10 **23rd August 2023.**

Delivered
23/08/2023

