

IN THE HIGH COURT OF UGANDA AT KAMPALA
(LAND DIVISION)

(Arising out of Civil Suit No.1101 of 2020)

VERSUS

- REGISTRATION.....RESPONDENTS**

Ruling.

Grounds of the application.

That while the 1st and 2nd respondents seek to recover their own interest in the suit land and benefit from the estate of the late Tetetio Nsubuga, the interests claimed in the suit do not include the applicant's beneficial interest in the suit land despite the fact that the 1st and 2nd

respondents had before instituting the suit assured him that they intended to redeem the estate land for the benefit of the entire estate.

In addition, the applicant has fears that the 1st and 2nd respondents may enter a consent judgment which may affect his interest in his late grandfather's estate which is the subject of the suit because the suit filed by the 1st and 2nd respondents is strictly in respect of their interest as they have declined to update the applicant as well as other members of the deceased's estate claiming that they are not answerable to anybody.

That the 1st and 2nd respondents may withdraw the suit, or be paid money owing to the fact that the applicant has on several occasions seen them holding meetings with **m/s Korea Evangelical Mission to all Nations Limited**.

That they have declined to disclose the intentions or outcome of the said meetings, and that even if no compromise or consent is entered into by the parties, the judgment of this court shall have a direct effect on the applicant's beneficial interest in the suit land without being given an opportunity to lay his position and evidence before this court.

Further, that while the applicant's lawyers have informed him that he can file his own suit against the same defendants over the same property, he has also been advised that such a suit will occasion a multiplicity of cases in the court yet the matters there can be settled in this suit; and that if the applicant is allowed to be joined in this suit, multiple suits shall be avoided since the judgment of this court will be binding on him as well.

That adding the applicant as a party is not only crucial but it is also necessary for the final determination of his rights in the suit property, since his interest and rights are not represented without him being a party to the suit, which is still in its early stages and the respondents stand to suffer no irreparable harm if the applicant is added as a plaintiff.

Representation.

The applicant was represented by **M/s Kayongo Jackson & Co. Advocates**. Counsel for the applicant filed written submissions as directed by this court.

None of the respondents however filed an affidavit opposing the application despite the fact that they were effectively served through their respective counsel to wit; **M/s KGN Advocates** for the 1st to 6th respondents, **M/s Sekabanja & Co. Advocates** for the 7th respondent, while the 8th respondent was served through her office.

Consideration of the application.

I have carefully read and considered the pleadings, evidence, and submissions of both parties. **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.

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Furthermore, **Order 1 rule 10 (2)** gives this court power to add a party at any stage of the proceedings either upon or without the application of either party, whose presence before the court may be necessary in order to enable the court to effectually and completely adjudicate upon and settle all questions involved in the suit, and on such terms as may appear to be just.

The issue for determination by this court therefore is whether the applicant ought to be added as a party to **High Court Civil Suit No. 1101 of 2020**.

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 plaintiff in the main suit which was filed by the 1st and 2nd respondents in their capacity as the beneficiaries of the estate of the late Nsubuga Teretio against the 3rd to 6th respondents who are the administrators of the estate of the late Nsubuga Teretio.

Against the 7th and 8th respondents they seek among others, a declaration that the sale and purchase transactions executed over the suit estate land comprised in **Busiro Block 413 plots 16 and 19 at Bwerengo Wakiso District** by the 1st administrator of the estate of the late Teretio Nsubuga as a trustee for the said estate, and the 6th defendant as a purchaser of the suit land, and the purported sanctioning of the same by the 1st to 5th defendants is not only fraudulent and illegal but also void abinitio.

The applicant through his affidavit avers that the suit filed by the 1st and 2nd respondents is in respect of their respective claims and that his beneficial interest in the estate of his late grandfather is not represented in the suit.

He also states that he opted to file this application to be added as a party to the main suit so that he can prosecute his claim rather than file a fresh suit of the same nature which would occasion a multiplicity of suits.



It is trite law that 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 or where no affidavit in reply is filed, the affidavit in support is taken to be unchallenged and truthful. **(See: Tororo District Administration v Andlalapo ltd [1997] KALR 126; Samwiri Mussa versus Rose Achen (1978) HCB 297**

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 court is therefore inclined to grant this application. No orders as to costs.

I so order.

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Alexandra Nkonge Rugadiya

Judge

6th February, 2023.

Delivered by email
Alexandra
✓ 9/2/2023