

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA
(LAND DIVISION)
MISCELLANEOUS APPLICATION NO.0134 OF 2023
(ARISING FROM CIVIL SUIT NO.3103 OF 2016)

SEWAYA MUHAMMAD----- APPLICANT/PLAINTIFF
VERSUS

1. BUKENYA FRANCIS
2. LAKE SIDE CITY LTD
3. KAUSHIK ROY DAMANI
4. LAKESIDE TOWNSHIP LIMITED ----- RESPONDENTS/DEFENDANTS
5. KIKONYOGO INVESTMENT LIMITED
6. HABA GROUP (U) LTD
7. DAMANICO PROPERTIES LTD
4. COMMISSIONER LAND REGISTRATION

RULING
BEFORE HON. LADY JUSTICE KANYANGE SUSAN

This application was brought under S.98 Civil Procedure Act, S.33 Judicature Act, Order 1 Rule 10(2) and Order 52 of the Civil Procedure Rules.

It seeks orders that;

- i. The applicant be allowed to join Civil suit No.3103 of 2016 as plaintiff
- ii. Costs of the application be provided for.

The grounds for the application were contained in the affidavit of the applicant Sewaya Muhammad but briefly they are;

That the applicant is a kibanja owner of 154 acres and is bonafide occupant on land having inherited the same as a beneficiary from estate of late Manzi Budalah Kawansenyi.

That on 13th May 1991 he also purchased a kibanja from Edirisa Saddala Bosa of Lweza occupied it until 2020 when he was evicted.

That the 2nd to 6th plaintiffs in CS No.3103 of 2016 entered into a fraudulent consent judgment with the 5th respondent and subdivided the land comprised in kyadondo Block 270. That the respondents have never legally purchased for valuable consideration the subject land in total disregard of his equitable interests.

That it is fair and just he be joined on the said suit so that his interests in the subject land are catered for.

In reply the 5th respondent averred that the application is incompetent, incurably defective and marred by hearsay and the affidavit is argumentative.

Further to this that applicant has no interest in Civil Suit No.3103 of 2013 and grounds of this application constitute applicant's cause of action in civil suit No.0394 of 2022 where the 5th respondent is the 1st defendant. That If the application is granted it will cause a multiplicity of suits over the same matter.

That consent judgment was entered for all the plaintiffs save for Bukenya Francis.

That his claim can be determined in HCCS No.394 of 2022.

The 7th respondent in reply averred that the applicant has not furnished court with sufficient proof of common-interest in the cause of action against the 7th respondent in HCCS No.3103 of 2016 as plaintiff.

That his kibanja claims against the 7th respondent are pending determination in HCCS No.394 of 2022 and allowing this application will lead to a multiplicity of suits.

Representation

M/s Tumusiime, Iumba & Co. Advocates represented applicants while M/s Obed Mwebesa & Associated Advocates represented the 5th respondent while M/s Tuhimbise & Co. Advocates represented the 7th respondent.



Issues

- 1- Whether the applicant ought to be added as plaintiff in HCCS No.3103 of 2016
- 2- What remedies are available to the parties

Resolution

Preliminary objection

Counsel for the 5th respondents raised a preliminary objection that the affidavit in support of the application is prolix and argumentative contrary to the rules of procedure and is incurably defective and ought to be struck out. He relied on Order 19 Rule 3(2) of the Civil Procedure Rules and case of **Male Mabirizi Kiwanuka versus The Attorney General SC. Misc. Application No. 07 of 2018.**

Order 19 Rule 3 of the Civil Procedure Rules provides.

1) Affidavits shall be confined to such facts as the deponent is able of his or her own knowledge to prove, except on interlocutory applications on which statements of his or her belief may be admitted, provided that the grounds there are stated. See **civil appeal No.13 of 2011** between **Kakooza Jonathan, Kalemwa Frank versus Kasaala Cooperative Society Ltd.**

Looking at the affidavit, it is true, the paragraphs are lengthy and repetitive and not desirable to the other party in court. But I find they are confined to facts and do not contain hearsay.

I thereby find that they are not argumentative/prolix or non-compliant with the provisions of Order 19 Rule 3 of the Civil Procedure Rules and I won't strike out the affidavit.

1. Whether the applicant ought to be joined as a plaintiff in HCCS No.3103 of 2016.

The joinder of parties to pleadings is governed under Order 1 Rule 10(2) Civil Procedure Rules. It provides that "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 adjudicate upon and settle all questions involved in the suit be added".

Therefore the power to add or strike off any party to pleadings lies within the discretion of court which must however be exercised judiciously. See case of **Yahaya Kariisa versus Attorney General and Another SCCA No.07 of 1994 (1997 HCB pg 27)**.

The main purpose of joining parties is to enable the court to deal with the matter brought before it and to avoid multiplicity of pleadings. In the case of **Departed Asians Property Custodian Board versus Jaffer Brothers Ltd 1999 EA pg 55**, It was held that it is necessary to show either that the orders sought could legally affect the interest of that person and that it is desirable to have that person joined or an order made that would bind that other person.

It thus has to be established that person added has an interest in the case.

Counsel for the applicant submitted that the applicant should be allowed to join as there are common questions of law and fact as exposed by the 5th and 7th respondents. That the applicant bought land from one Edirisa Saddala the same person whom the 1st respondent Bukenya one of the plaintiffs also bought from.

That the applicant has interest in the subject land and the respondents have entered into consent judgments without clear demarcations which affects his interest. Further to this that suit No.394 of 2022 is a separate suit which is not a test stipulated under order 1 rule 10(2) of the Civil Procedure Rules.

In reply counsel for the 5th respondent and also the counsel for the 7th respondent submitted that the intended claim in HCCS No.3103 of 2016 is

similar to the applicant's claim in HCCS No.394 of 2022 between similar parties. That if this application is granted court will hear two similar suits which is a multiplicity of suits. Further to this that he has failed to prove that the orders sought by the plaintiff in HCCS No.3103 of 2016 will affect his interest.

It is true the applicant herein filed civil suit No. 394 of 2022. In that suit he is the plaintiff and the defendants are; 1. Kikonyogo Investments Ltd, 2. Haba Group (U) Ltd, 3. Damanico Properties Ltd, 4. Uganda National Roads Authority and 5. Commissioner Land Registration.

His claim against the defendants is for a declaration that he is the customary heir of the late Manzi Budallah Kawansenyi who owned 154 acres at Kaatiko Birongo Cell Mutungo Ward and is entitled to that property as a beneficiary.

That the plaintiff is also entitled to 5 acres situate at Lweza B Cell Mutungo and the 1st to 4th defendants trespassed on it, and also a Munyonyo, Kigo Express Road was constructed without compensating him. Further to this that consent judgment entered on 13th July 2015 does not bind him.

In civil suit No.3103 of 2016 on which he wants to join as plaintiff the plaintiff is Bukenya Francis and the defendants; 1. Lakeside City Ltd, 2. Kanshuk Roy Damani, 3. Lake side Township Ltd, 4. Kikonyogo Investment Ltd, 5. Haba Group (U) Ltd, 6. Damanico Properties.

The grounds for requesting to be added as a plaintiff are that he is a kibanja owner and beneficiary of the late Manzi Budalah Kawansenyi who had a kibanja measuring 154 acres. That he also purchased a kibanja of 5 acres from Edirisa Saddala Bosa of Lweza measuring 5 acres. That defendants entered in consent judgment in 2020 fraudulently without his knowledge in respect of land at Lweza B and Katiko Birongo in total disregard of his equitable interests. He prayed to be joined so that his interest in the suit land are catered for.

I agree with counsel for the 5th and 7th respondents, that the Applicants intended claim in Civil Suit no 3103 of 2016 which he wants to join as plaintiff



is the same as civil suit no 394 of 2022 and the court cannot hear similar suits between the same parties unless consolidated. In this case since he has not joined the suit then it's not necessary for him to join as it will create a multiplicity of suits. Further to this the only interest he alleges with the present plaintiff is that he bought 5 acres at Lweza from Edrisa Saddala Bosa whom also the plaintiff bought from. Since its one of the claims in his suit no 394 of 2022 then I find that it's not necessary to join him as a party. In this suit most of the plaintiffs consented apart from one and adding on another plaintiff will delay the case further.

I thereby find no merit in the application and its hereby dismissed with costs.

DATED AT KAMPALA THIS 31st DAY OF August 2023

Susan
KANYANGE SUSAN

AG JUDGE LAND DIVISION.