

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MUBENDE
MISCELLANEOUS APPLICATION NO 235 OF 2023

BRIGADIER GENERAL JACOB MUSAJJAWAZA

APPLICANT

VERSUS

- 1. KAAYA ZAKAYO NAKUZAMBWA**
- 2. THE COMMISSIONER LAND REGISTRATION**
- 3. THE ADMINISTRATOR GENERAL**

RESPONDENTS

BEFORE HON JUSTICE MOSES KAZIBWE KAWUMI

RULING

The Applicant filed Chamber Summons under Sections 98 and 100 of the Civil Procedure Act, Orders 6 rule 29&31, Order 1 rules 10(2) &(4) and Order 2 rule 4(1) of the Civil Procedure Rules seeking Orders for:-

- 1.The Court to grant him leave to amend his Complaint in Civil Suit No.73 of 2022.
2. To grant him leave to add the Administrator General as the 3rd defendant in Civil Suit No.73 of 2022.
3. The costs of the Application to be provided for.

The grounds of the Application which are also reiterated in the Affidavit in support of the Summons are summarized below :-



- a) On 8th September 2022 the Applicant instructed a Law firm to institute a suit against the 1st and 2nd Respondents for various reliefs including a declaration that he is the lawful owner of land comprised in Singo Block 94 Plot 8 and for an Order directing the 2nd Respondent to register it in his name.
- b) On 4th October 2022 the Applicant engaged another Law firm which on conducting research into the estate of late Zakayo Musoke and Daudi Kawesi established that the 1st Respondent acquired Letters of Administration to both estates fraudulently which necessitates the amendment of the Plaint.
- c) That the Letters of Administration issued in Administration Causes No.305 of 2007 and No.409 of 2011 for the estates of Kawesi Daudi and Musoke Zakayo respectively should be revoked.
- d) The amendments are necessary for the court to determine the real questions in controversy to prevent a multiplicity of suits.
- e) That it is necessary to join the Administrator General to the suit for the court to effectively and completely settle all questions involved in the suit.
- f) That the intended amendments do not change the cause of action or adversely depart from the Applicant's original claim and will not prejudice the Respondents as they may be compensated by an award of costs in the event of any injuries resulting from the proposed amendment.
- g) In the alternative the Applicant contends that he is allowed to unite in the same suit several causes of action against the same Respondents jointly provided the court has jurisdiction to entertain the suit.

The 1st Respondent opposed the Application contending that the Applicant pleaded that he purchased the suit land from ABIYASALI KASUMBA and the 1st Respondent witnessed the transaction. The 1st



Respondent denied the allegation contending that the said Kasumba has never been the registered owner of the suit land and any transaction regarding the estate land attributed to him is illegal.

It is further contended that the Applicant sought a declaration arising out of the purchase agreement with Kasumba and not any of the Administrators of the estate of late Zakayo Musoke. The application to add the Administrator General thus amounts to adding a new cause of action not arising from the same facts yet the Applicant lacks the locus standi to seek a revocation of the Grant in respect of Musoke's estate.

The 3rd Respondent also opposed the Application contending that the Applicant has no cause of action against her since he is not a beneficiary in the estates of Musoke or Kawesi. The Applicant cannot also determine who should administer the two estates without proof that the beneficiaries are incapable of administering them.

It is further contended that the Applicant who challenges the authenticity of the Letters of Administration granted to the 1st Respondent has during the pendency of his own suit taken benefit of the impugned grant to transfer the suit land into his name.

The 3rd Respondent further contends that it is unjust and unreasonable to seek the involvement of the 3rd Respondent to validate the illegal actions between the Applicant and the 1st Respondent.

The 2nd Respondent did not file an Affidavit in Reply to the Application.

Representation.

M/S Kituuma-Magala & Co. Advocates represent the Applicant. M/S Nyanzi, Kiboneka & Mbabazi & Co. Advocates represent the 1st Respondent.



Counsel for the parties filed submissions which have been considered in rendering the decision but have not been reproduced.

Issue.

Whether the Applicant should be granted leave to amend his pleadings and to add the 3rd Respondent as a party to the suit.

The Law on amendment of pleadings is laid out in Order 6 Rule 19 of the Civil Procedure Rules which states:

A court may, at any stage of the proceedings, allow either party to alter or amend his or 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 questions in controversy between the parties.

It is also an established principle in our jurisprudence that amendments to pleadings sought before the hearing should freely be allowed, if they can be made without injustice to the other side and there is no injustice if the other side can be compensated by costs. The courts will also not refuse to allow an amendment simply because it introduces a new case.

Mulowooza & Brothers Limited V N. Shah. SCCA No,26 of 2010.

The Applicant claims to have purchased the land he seeks the 2nd Respondent to register in his name from a one Kasumba who per the contention of the 1st Respondent was not seized with legal authority to sell the land. The 1st Respondent was added to the suit and his WSD clearly brings out the alleged falsities in the Applicant's alleged acquisition of the suit land from Kasumba.

The alleged illegalities raised by the Applicant in respect of the estate administered by the 1st Respondent and which the Applicant seeks to introduce in the amended Plaint do not in the opinion of the court



sanitize the alleged illegal transaction between him and the said Kasumba.

The 1st Respondent who is alleged to have been involved in the transaction as alleged by the Applicant is in the interest of justice required to justify his alleged involvement as the Administrator of the estate the suit land forms part of and this can best be done when all facts pertaining to the estate the 1st Respondent administers are pleaded.

The sought amendment will not therefore cause any injustice to the 1st Respondent and/ or the 2nd Respondent since the question of the Applicant's locus standi to raise them is also potentially a substantive issue to be addressed by the court. The sought amendments do not also amount to a change or substitution of the pleaded cause of action by the Applicant.

On contrary the sought amendments will enable the court to address the real questions in controversy between the parties which would also prevent a multiplicity of suits arising from the suit land the Applicant claims to have been bought from the estates administered by the 1st Respondent.

I thus find this to be a proper case for the Applicant to be allowed to amend his Complaint in the terms indicated in the Application.

The Applicant further seeks to have the 3rd Respondent joined to the suit. I find no credible basis for doing so since any infractions in the acquisition of Letters of Administration to the estates administered by the 1st Respondent have no direct link to the 3rd Respondent.

Any reliefs sought by the Applicant in regard to the acquisition of Letters of Administration by the 1st Respondent and/or the manner in which he has administered the estates do not necessarily require the 3rd Respondent to be a party to the suit.



In the premises I allow the application in part. The Applicant shall file and serve an Amended Complaint on the 1st and 2nd Respondents within 15 days from the date of this Ruling. I decline the application to join the 3rd Respondent to the suit. Costs shall be paid to the 3rd Respondent.



Moses Kazibwe Kawumi

Judge

12th September 2023