

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(LAND DIVISION)

MISCELLANEOUS APPLICATION NO. 3556 OF 2023

(ARISING FROM CIVIL SUIT NO.88 OF 2019)

COMFORT HOMES(U) LTD::: APPLICANT

VERSUS

1. JOHN KOKU APUULI

2. MAKOKO DAVID

3. PETER WAFULA

4. TUMWINE TREVOR

5. NATIONAL HOUSING & CONSTRUCTION CO.: RESPONDENTS

BEFORE; HON. LADY JUSTICE NALUZZE AISHA BATALA

RULING

Introduction;

1. COMFORT HOMES(U)LTD (*hereinafter referred to as the Applicant*)

brought the present application against **JOHN KOKU APUULI,**

MAKOKO DAVID, PETER WAFULA, TUMWINE TREVOR &

NATIONAL HOUSING AND CONSTRUCTION COMPANY

(*hereinafter referred to as the Respondents*) by way of notice of

motion under Sections 33 of the Judicature Act cap.13, Sections

98 of the Civil Procedure Act Cap.71, Order 1 Rules 10(2) & Order

52 rules 1,2 & 3 of the Civil Procedure Rules S.I.71-1 for orders that;

- i) That Joyce Kuku Winyi, Grace Tibihikira Makoko and Priscilla Susan Kuku be joined as defendants in civil suit No.88 of 2019, plaint, summons be amended and the same be served on the added parties accordingly.
- ii) Costs of the application be provided for.

Background.

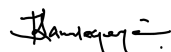
- 2. The applicant is the registered proprietor of Block 221 Plot 2345 at spine road, Nalyako, Kyadondo Wakiso District measuring 084 hectares. Through services of Survnet GNSS Surveying Network, the applicant opened up boundaries to the suit land and found the same to be encroached upon by the development of the adjoining Plots 604,607,608 & 609 which are occupied by the 1st to the 4th respondents.
- 3. The applicant then brought an action for trespass against the 1st - 4th respondents vide civil suit No.088 of 2019 seeking for declarations that the respondents are trespassers on the suit land and an eviction order, permanent injunction and costs of the suit.

The respondents/defendants stated in their written statement of defense how they were not the registered proprietors to the suit land however they were in occupation of the same based on the right of ownership by one Joyce Kuku Winyi, Grace Tibihikira Makoko and Priscilla Kuku who are the registered proprietors of the adjacent plots, hence this application.

Applicant's evidence;

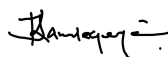
4. The application is supported by an affidavit in support deponed by **Mrs Karungi Rhona** the head of the applicant's legal department which briefly states as follows;

- i) That the applicant is the registered proprietor of Block 221 Plot 2345 at spine road Nalyako, Kyadondo, Wakiso District measuring 0.84 hectares.
- ii) That through the services of survnet GNSS surveying network, they opened up boundaries of the suit land and found the same to be encroached upon by the developments on the adjoining Plots 604,607,608 & 609 which are occupied by the 1st – 4th respondents.



- iii) That the applicant brought an action for trespass against the respondents vide civil suit NO.088 of 2019, where the respondents/defendants stated in their written statement of defense that they were just occupiers of the adjacent plots and they were not the registered proprietors of the same.
- iv) That Plot 608 though occupied by the 1st respondent is registered in the names of Joyce Kuku Winyi.
- v) That Plot 604 is registered in the names of Mrs Grace Tibihikira Makoko, Plot 609 is registered in the names of the 3rd respondent.
- vi) That plot 607 is registered in the names of Priscilla Kuku, the same being occupied by the 4th respondent.
- vii) That the presence of Joyce Kuku Winyi, Grace Tibihindikira Makoko and Priscilla Kuku is necessary in order to enable court effectually and completely adjudicate upon all questions in the suit and avoid multiplicity of suits.
- viii) That it is just and equitable that the application is granted.

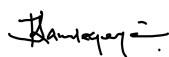
Respondent's evidence;



5. The application is responded to by an affidavit in reply deposed by **Mr.Makoko David** the 2nd respondent which briefly states as follows;

- i) That the applicant brought this application for orders to join John Kuku Winyi, Grace Tibihikira Makoko & Priscilla Susan Kuku as defendants in HCCS No.88 of 2019.
- ii) That however the applicant has deliberately ignored and failed to join the parties he desires to join as defendants as respondents to this application.
- iii) That the applicant's failure to join Joyce Kuku Winyi, Grace Tibihikira Makoko and Priscilla Susan Kuku as respondents to this application is an egregious affront to their right to be heard.
- iv) The actions of the applicant breach the principles of natural justice
- v) That it is just and equitable that this application be dismissed with costs awarded to the 2nd respondent.

Representation;



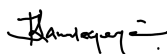
6. The applicant was represented by Mr. Hanorl Turigye of M/S CR Amany & Co Advocates whereas the 2nd respondents was represented by Mr. Moses Muziki of M/S Kirunda & Co. advocates.
7. There were no any affidavits in reply from the 1st, 3rd & 4th respondents despite being served with the application, therefore this application stands unchallenged against the same parties.
8. The applicant and the 2nd respondent filed affidavits and submissions which I have considered in the determination of this application.

Issues for determination;

- i) Whether Joyce Kuku Winyi, Grace Tibihikira Makoko and Priscilla Kuku can be added as defendants in civil suit No.88 of 2019.
- ii) What remedies are available to the parties?

Resolution and determination;

Issue 1; **Whether Joyce Kuku Winyi, Grace Tibihikira Makoko and Priscilla Kuku can be added as defendants in civil suit No.88 of 2019?**



9. Before I proceed to resolve and determine the first issue to this application, I will draw attention to the preliminary objection raised by the 2nd respondent where its based on the point that the parties the applicant desires to be added as co-defendants to civil suit No.88 of 2019 have not be accorded the opportunity to be heard in this application since they are not parties to this application, therefore rendering the application bad in law.

10. The 2nd respondent states in his submissions that no party is to sufferer judicial proceeding without an opportunity of being heard and no decision can be declared without hearing both parties.

11. Counsel for the 2nd respondent relied on various authorities with the leading authority being the supreme court decision in **Bakaluba Peter Mukasa Vs Betty Nambooze Bakireke**, Election petition appeal no.04 of 2009 where Justice Bart Katureebe (as he was then) stated that **“I wish to now deal with the issue of fair trial and hearing and whether indeed there was a denial of that right to the appellant. Fair trial is one of the fundamental rights guaranteed by the constitution.**

12. However, the same decision is distinguished from the application at hand, the gist of the supreme court decision was in

regards to the determination of civil rights and obligations or any criminal charge where a person shall be entitled to a fair, speedy and public hearing before an independent and impartial court or tribunal established by law.

13. The fair hearing referred to by the 2nd respondent comes into action when the determination of a right enjoyed by person is in question and court cannot determine the said right without according the same party an opportunity to be heard something that does not exist in the instant application.

14. The main gist of this application is to ascertain whether the presence of Joyce Kuku Winyi, Grace Tibihikira Makoko and Priscilla Susan Kuku is necessary to enable this court adjudicate upon all matters arising in civil suit No.088 of 2019.

15. The instant application is brought under order 1 rule 10(2) of the Civil Procedure Rules which states 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 court may be necessary** in order to enable court effectually and completely to adjudicate upon and settle all questions involved in the suit be added”

16. The said provision speaks to the fact that in an application of this nature, the underlying condition is that the presence of the party should be necessary to enable court effectually and completely adjudicate upon and settle all questions involved in the suit. (*see; Departed Asian Custodian Board Vs Jaffer Brothers ltd(1991)EA 55 Justice Mulenga JSC*)

17. Parties should take note that courts in determining such applications, they exercise their own discretion to ensure that a just and fair decision is reached.

18. In light of the above averments, I am of the view that the preliminary objection raised by the 2nd respondent is not sustained and is hereby overruled.

19. I will proceed to determine the first issue to this application;

20. In applications for addition of parties to suits, the law applicable is Order 1 rule 10(2) of the Civil Procedure Rules which states 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 court may be necessary in order to enable court effectually and completely to adjudicate upon and settle all questions involved in the suit be added”

21. The condition precedent is that the court must be satisfied that the presence of the party sought to be added would be necessary in order to enable the court to effectually, completely adjudicate and settle all questions involved in the suit.

22. However, parties should take key note that in considering whether or not to grant an application for addition of a party brought under Order 1 rule 10(2) of the Civil Procedure Rules, court exercises its own discretion judiciously taking into account all the circumstances of the case. **(See; Samson Sempesa Vs P.K Sengendo, Misc. App No.577 of 2013 before Justice Bashaija)**

23. In the instant application, the applicant avers in his affidavit in support that the parties he desires to be added as defendants in

civil suit No.088 of 2019 hold interest in the suit land (which is Plots 604,607,608 & 609)

24. The applicant further submits that Plot 604 is registered in the names of Mrs Grace Tibihikira Makoko, Plot 607 is registered in the names of Priscilla Susan Kuku and Plot 608 is registered in the names of Joyce Kuku Winyi, this fact is supported by the certificates of title adduced in this court and attached to the application.

25. The 2nd respondent in his affidavit in reply states that the best persons to reply to this application are the registered proprietors to the suit land who are not party to this application.

26. The 2nd respondent further states that he is not in possession of part of the suit land and he has no right whatsoever in the suit land. I find this as a fact to be proved during the hearing of civil suit No.088 of 2019.

27. Referring to the plaint in civil suit No.088 of 2019, the cause of action against the respondents is one of trespass where the respondents/defendants state in their joint written statement of defense that they were occupying the suit land on behalf of the registered proprietors but they are not registered proprietors to the

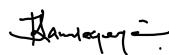
same land, this justifies the applicant's desire to have the registered proprietors of the suit land added as co-defendants to the suit.

28. The orders sought by the applicant/plaintiff in civil suit No.088 of 2019 in one way or the other are to affect the interests of the registered proprietors to the suit land and this court cannot determine the issues in question regarding the suit land without considering the interests of the registered proprietors.


29. I am of the view that to have all issues determined in civil suit No.088 of 2019, the presence of the registered proprietors to the suit is necessary and this will enable court adjudicate upon all matters arising in the said suit.

30. The move to have the registered proprietors to the suit land added as co-defendants is to minimize the further suits that may be brought by the same registered proprietors. Therefore, this application is to avoid the multiplicity of suits something the law on addition of parties intends to cure.

31. In the result, this court is to the finding that the application has merit and succeeds with the following orders;

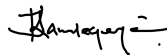


- i) That Joyce Kuku Winyi, Grace Tibihikira Makoko and Priscilla Susan Kuku be joined as co-defendants in civil suit No.88 of 2019.
- ii) The applicant who is the plaintiff in civil suit No.88 of 2019 shall file and serve an amended plaint to the respondents within 21 days from the date of this ruling.
- iii) The applicant to serve the amended plaint together with summons to file a defence onto Joyce Kuku Wini, Grace Tibihikira Makoko and Priscilla Susan kuku who should file their written statement of dense within 15 days from the date of service.
- iv) The respondents who are the defendants in civil suit No.088 of 2019 may file an amended written statement of defense to the amended plaint within 15 days from the date of service of the summons and the amended plaint onto them and in accordance with the Civil Procedure Rules.



v) Each party to bear its own costs.

I SO ORDER.



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NALUZZE AISHA BATALA

JUDGE

29th /12/2023