

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(LAND DIVISION)

MISCELLENEAOUS APLICATION NO. 3070 OF 2023

(Arising from civil suit no.620 of 2021)

SEKUBWA WILBERFORCE MPINDI :::::::::::::::::::: APPLICANT

VERSUS

- 1. TINKASIMIRE JOHN(suing through his lawful Attorney
Namulindwa Joy Nabyaliro & Byamukama Levister)**
- 2. KUTEESA MIRIAM(Administrator of the estate of the late
Musa Kalanzi Muganzi)**
- 3. NANTUMBWE EDITH KIZITO**
- 4. MUKALAZI JIMMY**
- 5. NANKYA ELINA**
- 6. NINA INTERIORS LIMITED**
- 7. DR. EMMY TUGUME BERAHO**
- 8. DR. MONICA BERAHO KARUHANGA :::::::::::::::::::: RESPONDENTS**

BEFORE; HON. LADY JUSTICE NALUZZE AISHA BATALA

RULING

Introduction;

- 1. Mr. Sekubwa Wilberforce Mpindi** (*hereinafter referred to as the Applicant*) brought the present application against **Mr. Tinkasimire John(suing through his lawful attorneys**



Namulindwa Joy Nabyaliro & Byamukama Levister), Mrs.Kuteese Miriam(administrator of the estate of the late Musa Kalanzi Muganzi),Mrs, Nantumbwe Edith Kizito,Mukalazi Jimmy,Nankya Elina,Nina interiors,Dr.Emmy Tugume Beraho,Dr.Monica Beraho Karuhanga (*hereinafter referred to as the Respondents*) by way of notice of motion under Section 98 of the Civil Procedure Act Cap.71, Order 1 Rule 3,Order 52 Rules 1,2 & 3 of the Civil Procedure Rules S.I.71-1 for orders that;

- b) The applicant be added to civil suit No.620 of 2021 as a co-defendant.
- c) Costs of the application be provided for.

Background;

2. The Applicant is the equitable owner of land comprised in Kibuga Block 28 Plot 540 land at Makerere (hereinafter referred to as the suit land) and any decisions arising from civil suit No. 620 Of 2021 directly affect him. Plot 540 was without the applicant's authorization illegally subdivided into Plots 1244, 1245,1246 & 1247. This court



has in two of its rulings found that the creation of plots 1244, 1245, 1246 and 1247 was unlawful and ordered for cancellation of the certificates of title to the said plots, this honorable court pronounced it self that the land in dispute belonged to the applicant hence this application.

Applicant's evidence;

3. The application is supported by an affidavit deponed by **Mr.Sekubwa Wilberforce Mpindi** the applicant which briefly states as follows;

- i) That I am the equitable owner of land described as Kibuga Block 28 plot 540 land at Makerere (hereinafter referred to as the suit land).
- ii) The suit land was illegally subdivided without the authorization of the applicant.
- i) This honorable court found that the said subdivision was unlawful and ordered for cancellation of the certificates of title to the said plots vide Misc. Application No.223 of 2018

- ii) That despite the cancellation of the said certificates of title by court, the 6th respondent illegally transferred plot no.1244 to the 7th and 8th respondents.
- iii) That the said transfer was unlawful and contrary to an already issued court order vide Misc. Application No.223 of 2018
- iv) That the respondents are party to civil suit No.620 of 2021 where the 1st respondent is suing the 2nd – 8th respondents for a permanent injunction restraining them from further dealings in the subject land.
- v) That I was advised by my lawyers,M/s maldes advocates that the claims raised within civil suit No.620 of 2021 directly affect the applicant's ownership of the suit land.
- vi) That the only way the applicant can be heard is by granting this application in favor of the applicant.

1st respondent's evidence;

4. The application is responded to by an affidavit in reply deponed by **Mr. Tinkasiimire John** (suing through his lawful attorneys



Namulindwa Joy Nabyaliro and Byamukama Levister) the first respondent which briefly states as follows;

- i) That I instituted HCCS-No.620 of 2021 against the 2nd – 8th respondents claiming an equitable interest of 2.5 Acres of a Kibanja in land comprised in Kibuga block 28 plots 1244,1245,1246 and 1247 (formerly land comprised plot 540)
- ii) That the cause of action against the 2nd – 8th respondents arose due to the fact that the 2nd respondent was in civil suit No.95 of 1995 declared the owner of the land comprised in kibuga block 28 plot 540 at Makerere.
- iii) That following the said judgement, the 2nd respondent entered into a memorandum of understanding with the 1st respondent whereby as a kibanja owner of 2.5 acres of and comprised in kibuga Block 28 Plot 540 at Makerere, I forfeit 0.50 decimals to her in consideration of her giving the 1st respondent the mailo interest of the 2 acres in the said land.



- iv) That in a turn of events, the 2nd respondent compromised the decree in civil suit No.95 of 1995 with the 3rd – 5th respondents and sold the entire land comprised in kibuga Block 28 Plot 540 at Makerere without due consideration
- v) That following the foregoing, the 3rd-5th respondents sold the suit land to the 6th respondent who subsequently sold the same to the 7th and 8th respondents who have since subdivided the same into plots 1244,1245,1246 & 1247
- vi) That I have been advised by my lawyers that my addition by the applicant to civil suit No.620 of 2021 as a co-defendant is misconceived since I don't have a cause of action against the applicant.
- vii) That the applicant's interest would best be achieved if he instituted a different suit against the respondents and have the same consolidated with civil suit No.620 of 2021
- viii) That I have never dealt with my kibanja with any person and the gift intervivos of the same by Teopista Mpindi Namakula to the applicant is denied.

4th respondent's evidence;



5. The application is responded to an affidavit in reply deponed by **Mr.Joshua Mukalazi** the 4th respondent which briefly states as follows;

- i) That the 4th respondent is duly authorized to swear the affidavit on behalf of the 3rd and 5th respondents.
- ii) That the applicant is not a necessary party to civil suit No.620 of 2021 his interest in the suit land was determined in civil suit No.500 of 2013.
- iii) That the applicant is at liberty to proceed and execute the pronouncement made in civil suit No.500 of 2013 than being joined as a co-defendant in civil suit No.620 Of 2021
- iv) That the applicant already commenced execution proceedings by way of prerogative orders against all parties to this application.
- v) That there is no common question of law or fact between the applicant and the respondents that would a rise and the sole question that could have arisen was determined in civil suit No.500 of 2013.



- vi) That the applicant is not likely to be prejudiced by the decision arising from civil suit no.620 of 2021 since the interest claimed by the 5th respondent who is the plaintiff is different from that of the applicant and in the event the suit succeeds, the two can co-exist, the applicant settling in the position of the land lord and the plaintiff/5th respondent settling in the position of tenant by occupancy.
- vii) That the applicant had earlier filed an independent suit for recovery of the suit land but the same was dismissed for want of prosecution.
- viii) That allowing the applicant to be joined as a co-defendant in civil suit No.620 of 2021 would be injudiciously circumventing the dismissal order.
- ix) That what I have stated herein is true and correct to the best of my knowledge.

7th and 8th respondent's evidence;

6. The application is responded to an affidavit in reply deponed by **Dr.Emmy Tugume Beraho** the 7th respondent on behalf of the 8th respondent as well which briefly states as follows;



- i) That the 7th respondent has the authority to depone this affidavit on behalf of the 8th respondent
- ii) That the applicant instituted the same application in the supreme court where it was confirmed that he had no interest in the suit property other than the chattels he had placed thereon.
- iii) That the 7th and 8th respondents are the registered proprietors of land comprised in kibuga Block 28 Plot 1244 land at Makerere.
- iv) That the application is misconceived, the applicant has no justifiable grounds for grant of this application.
- v) That there have been various decisions of court touching the land where the applicant purports to have interest in block 28 plot 540 and that there is no purpose of adding the applicant as a co-defendant to civil suit No.620 of 2021
- vi) That whatever I have stated is true and correct to the best of my knowledge and belief.



Representation;

7.The applicant was represented by **Mr. Benard Mutyaba** of M/S Maldes Advocates whereas the 3rd,4th&5th respondents were represented by **Mr. Simon Kiiza** of M/S Kiiza & Co.Advocates, the 7th and 8th respondents by Mrs. **Tusime Asia Kiribedde** of M/S Nabukenya,Mulalira & Co.Advocates. There was no representation from the 1st respondent, the 2nd respondent never filed an affidavit in reply despite being served with the application whereas the applicant did not adduce evidence of proof of service on the 6th respondent. The applicant,1st,3rd,4th,5th,7th & 8th respondents filed their affidavits which I have considered in the determination of this application. No party filed submissions in the instant application.

Issues for determination;

- i) Whether the applicant can be added as co-defendant to civil suit No.620 of 2021?**
- ii) What are the remedies available to the parties?**

Resolution and determination of the issues;



Issue 1; **Whether the applicant can be added as a co-defendant in civil suit No.620 of 2021.**

8. 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 my 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” (Emphasis is mine)
9. This provision establishes two scenarios in an application for addition of a party to a suit, the first scenario being “a person who ought to be joined” and the second scenario being “a person whose presence is necessary” which scenarios I will proceed to distinguish.



10. In elaborating about the latter scenario, the supreme court of Uganda in **Deported Asian Custodian Board Vs Jaffer Brothers ltd(1991)EA 55** Justice Mulenga JSC observed that; in order for a person to be joined to a suit on the ground that his presence was necessary for the effective and complete settlement of all the questions involved in the suit, it was necessary to show that the orders sought would legally affect the interests of that person and it is desirable to have that person joined to avoid a multiplicity of suits or that the defendant could not effectually set up a desired defense unless that person was joined or an order made that would bind that other question. This position was re-echoed by the court of appeal in the **Electoral Commission vs Sebuliba mutumba Richard and 2 ors,Misc.application No.30 of 2012** at page **12**

11. The reading of the above underlined phrases establishes two kinds of persons and that is “a necessary person” to be added and “a proper person” to be added to the suit.

12. I will draw reference to learned authors that have distinguished the two kinds of persons; Mulla in his work, the

Code of Civil Procedure, Volume 2 at page 1448 where he clearly states that a necessary party is one without whom no order can be effectively made and for that person to be considered a necessary party, there should be a right to some relief against him in respect of the matter involved in the suit. Where as a proper person on the other hand is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision on the question involved in the proceedings

13. A proper party should however have a defined,subsisting,direct and substantive interest in the issues arising in the litigation, the interest must be cognizable in the court of law, that is an interest which the law recognizes and which the court will enforce.**(See; Walimu Cooperative Savings and Credit Union Vs Okumu Benjamin and Komakech Amos, Misc.App No.101 of 2022 before Justice George Okello)**

14. This is a distinction that in real practice is often not taken and considered while citing Order 1 Rule 10(2) of the civil procedure rules since the line distinguishing could be difficult



to draw. A party could either be a necessary party or a proper party to the suit however in exceptional circumstances a party can be both a proper party and a necessary party depending on the circumstances of the case.

15. 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.

16. 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 judicially 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)**

17. The question a person would ask himself is whether a plaintiff need to have a cause action against that applicant who desires to be added as a co-defendant to a suit for him to be added as a party to the said suit. The supreme court of Uganda



has pronounced itself and washed away all the doubts and uncertainties in regards to this aspect.

18. The supreme court of Uganda in **Departed Asian Custodian Board Vs Jaffer Brothers ltd(supra)** in ascertaining the above aspect made reference to Order 1 rule 10(2) of the civil procedure rules which is similar to the English rules of the Supreme Court Order 16 rule 11 under which the case of **Amon Vs Raphael tuck & Sons ltd (1956)1 ALL ER** was considered, Justice Mulenga JSC stated that a party may be added to a suit not because there is a cause of action against the party but because the presence of the party is necessary in order to enable the court effectually and completely adjudicate upon and settle all the questions involved in the cause or matter.

19. Turning to the application before this court, the graven of the application is that the applicant has an equitable interest in the suit land in civil as stated under paragraph 2 of the affidavit in support of the application, the sales agreement and the gift deed attached onto the application. He further states that the suit land was illegally subdivided into plots 1244,1245,1246 & 1247 without his knowledge.



20. The applicant states that he brought an application Misc. Application No.223 of 2018 for cancellation of the certificates of title to the above subdivided plots of land where court ordered for the cancellation of the certificates of tile and the land to restored in the names of the applicant.
21. The applicant further states that the respondents are involved in another litigation which is Civil Suit No.620 of 2021 where the 1st respondent is the plaintiff suing the 2nd-8th respondents for a temporary injunction restraining them from further dealings in the subject plots.
22. The 1st respondent in his affidavit in reply under paragraph 1 states that he instituted civil suit No.620 of 2021 against the 2nd – 8th respondents claiming his equitable interest in the suit land comprised in kibuga Block 28 Plots 1244,1245,1246 & 1247(Formerly plot 540).
23. The 1st respondent further states in his affidavit in reply under paragraphs 8 & 9 that he has no cause of action against the applicant and he can't be added as the co-defendant but the best remedy to the applicant is institute another suit and have it consolidated with civil suit No.620 of 2021



24. In an affidavit in reply deponed by the 4th respondent who also deponed the same affidavit on behalf of the 3rd and 5th respondents, he states under paragraphs 3 & 4 that the applicant's interest was determined in civil suit No.500 of 2013 and the court already declared the applicant to be the owner of the sub divided plots of land/suit land.

25. In affidavit in reply by the 7th respondent who deponed the same affidavit on behalf of the 8th respondent as well states under paragraphs 3,4 & 5 that the 7th responded is the registered proprietor to block 28 plot 1244 and that the applicant brought an application of this nature in the supreme court where it was determined that he had no interest in block 28 plot 1244 but the 7th respondent does not adduce any order or ruling from the said application before court.

26. The above averments raise the aspect that indeed it is true the applicant has an equitable interest in the suit land referring to the order of court in misc. Application No.223 of 2018 where the court ordered the certificates of titles created from the subdivided plots of land be cancelled and the suit land to restored in the names of the applicant and the sales agreement

adduced in court ascertaining how the applicant acquired the suit land before the subdivision had occurred.

27. The orders sought by the 1st respondent who is the plaintiff in civil suit No.620 of 2021 against the 2nd -8th respondent over the suit land would at one point affect the interest of the applicant over the suit land.

28. The fact that the 1st respondent has no cause of action against the applicant and therefore he cannot be added as a co-defendant is not necessary in the circumstances and as per the above cited authorities. **(See; *Deported Asian custodian board Vs Jaffer Brothers ltd(supra) and Walimu Cooperative Savings and Credit Union Vs Okumu Benjamin and Komakech Amos(supra)***

29. The addition of the applicant to the civil suit is necessary to enable court determine all the questions arising from civil suit No.621 of 2021 since this honorable court cannot determine the interests of persons over land that was restored to the applicant by a valid court order, it would be more prudent and satisfactory if the interest of the applicant is put into consideration in determining the interests of the other

respondents in civil suit No.620 of 2021 and the interest of the applicant can not be considered when he is not a party to the proceedings.

30. Allowing the applicant to bring another action against the respondents to protect his interest over the suit land would be leading to multiplicity of suits, this is something the law on addition of parties intends to cure and courts by section 33 of the Judicature act are enjoined to avoid since multiplicity of suits saddles court unnecessarily and does not promote judicial economy, aside from exposing litigants to case protraction, inconveniences, costs and expenses.

31. The applicant proceeding to file a suit to protect his interest over the suit land yet he can be added as a party to civil suit No.620 of 2021 is something that defeats the rationale of Order 1 Rule 10(2) of the civil procedure rules.

32. I will not join the averments by the 1st, 3rd, 4th, 5th, 7th & 8th respondents on the same voyage of condemning the addition of the applicant to civil suit No.620 of 2021 as irrelevant and unnecessary in the instant case.



33. For the foregoing reasons, I find that the applicant has made out a case to be added as a co-defendant in civil suit No.620 of 2021 and the application here by succeeds with the following orders.

- i) The applicant is hereby added as a co-defendant in civil suit No.620 of 2021.
- ii) The 1st respondent who is the plaintiff in civil suit No.620 of 2021 shall file an amended plaint to include the applicant among the defendants within 21 days from the date of this ruling.
- iii) The 1st respondent who is the plaintiff in civil suit No.620 of 2021 shall serve the amended plaint to all the defendants in the suit within 14 days from the date of filing the amended plaint.
- iv) The respondents who are the defendants in civil suit No.620 of 2021 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) The applicant to file his written statement of defense within 15 days from date of service of the summons and the amended plaint and in accordance with the civil procedure rules.
- vi) Each party to bear its own costs.

I SO ORDER.



NALUZZE AISHA BATALA

JUDGE

29th/11/2023