

IN THE HIGH COURT OF UGANDA AT KAMPALA

kibanja and started construction of a residential house in which he has lived with his family.

That although the applicant paid *busuulu* for the said *kibanja* until 2015 & 2016, sometime in 2015 when he had left the country to work in Rwanda, he received communication from the respondent that his house had been knocked down by KCCA officials, and a one Mukalazi Ally; and that he (the applicant) immediately generated a power of attorney appointing the respondent as his lawful attorney to file a suit against the defendants in the main suit.

That although the said documents were to be sent to him for execution by bus, the same was not done and that the lawyer informed him that they had found a better way of the respondent representing the applicant without powers of attorney; and that the suit had already been filed. That when he came back into the country sometime in 2017, he was informed that the suit had been fixed for hearing.

That sometime in 2021, the applicant approached the lawyer demanding to be availed a copy of the plaint filed on his behalf but his request was objected to and that the lawyer instead gave him a copy of the purchase agreement in respect of the same *kibanja* executed in favour of the respondent who later revealed to the applicant that he had instituted the suit in his capacity against the applicants *kibanja*.

That the respondent had written a parallel purchase agreement affecting the applicant's ownership of the suit property and that he was advised by his lawyers to file this application challenging the propriety of the suit, and ask court to substitute him as the proper plaintiff.

In addition, that the respondent lacked *locus standi* to sue against the applicant's *kibanja* and that the results of the suit filed by the respondent will affect his interest in the suit *kibanja* if it is not well guarded thus it is equitable that the application is granted.

The respondent opposed the application through his affidavit in reply wherein he sought the leave of this court to cross-examine the applicants on the

contents of his affidavit in support. He objected to the application on grounds that it is devoid of any legal merit, is an abuse of court process and is intended to waste court's time thus it should be dismissed with costs.

That because the applicant has an interest in the suit *kibanja*, he can only seek to be joined as a party but not to have the respondent struck out considering the fact that the respondent's interest in the suit *kibanja* is already established, and that the applicant has also acknowledged the respondent's interest originating from 24th February 2012 which he was at all time aware of.

That the applicant seeks to inherit the case filed by the party who has an interest in the suit *kibanja* without even notifying the defendants in the main suit and yet he is at liberty to sue the respondent, or apply to be joined as a party to the suit rather than strike off the respondent who has demonstrated that he has an interest in the *kibanja* and has since obtained injunctive orders.

The applicant did not file an affidavit in rejoinder to the averments set out in the respondent's affidavit in reply.

The applicant was represented by **M/s Kabuusu Muhumuza & Co. Advocates** while the respondent was represented by **M/s Tumusiime Irumba & Co. Advocates**.

Consideration of the application.

The issue for determination is whether the applicant can be added as party **Civil Suit No.533 of 2015**, and the respondent be struck off as the plaintiff therein. The joinder of parties to pleadings is governed under **Order 1 rule 10 (2) of the Civil Procedure Rules S.I 71-1** which 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 to adjudicate upon and settle all questions involved in the suit, be added."

- 5 The procedure for bringing such an application is provided for under **Order 1 rule 13 Civil Procedure Rules (supra)** that;

10 *"Any application to add of strike out or substitute a plaintiff or defendant may be made to the court at any time before trial by mention or summons or at the trial of the suit in summary manner."*

It is worthy of note that adding or striking off a party to pleadings, whether on application of the parties or on court's own motion, is in the discretion of court. Like all discretion, however, it must be exercised judiciously based on sound principles. **See: Yahaya Kariisa v. Attorney General & A'nor, S.C.C.A. No.7 of 1994 [1997] HCB 29.**

In the present case, the applicant seeks orders striking off the respondent as the plaintiff in the main suit, and substituting him as the plaintiff, on grounds that because the respondent has no interest in the suit *kibanja*, he had no *locus* to institute the suit in the first place.

- 20 The respondent on the other hand avers that although the applicant indeed has an interest on the suit *kibanja*, he too has a subsisting interest thereon that was affected, and by virtue of which he instituted the suit. He claims to have instituted the suit to protect his interest and that rather than be struck off from the suit, the applicant should instead be added as a party thereto.

- 25 The purpose of joinder of parties is 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.



While the applicant disputes the respondent's claim over the land on grounds that the respondent had written a parallel purchase agreement affecting the applicant's ownership of the suit property and that he was advised by his lawyers to file this application challenging the propriety of the suit.

- 5 It is clear that the applicant's averments impute allegations of fraud on the conduct of the respondent and how he obtained an interest on the land.

In those circumstances, it would be appropriate and in the interest of justice that all matters touching the subject matter of the suit including the question of the validity of the claim of ownership by either side be determined finally
10 and completely, to avoid litigating over the same matters again.

Accordingly, it is the finding of this court that it would be an act against the rules of natural to deny the respondent a hearing. Thus rather than strike off the respondent as the plaintiff, it is appropriate to have the applicant herein added as a party to the suit so that his claim over the *kibanja* vis-à-vis the
15 respondent's claim can be ascertained after assessing all the evidence in a full trial.

This application is hereby granted in the following terms:

- a. The applicant is hereby added as a party to Civil Suit No.533 of 2015 and shall file its pleadings within 14 days of delivery of this
20 ruling;**

- b. Costs shall abide the cause.**

I so order.

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Alexandra Nkonge Rugadya

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Judge

29th March, 2023

*Delivered by SC's
29/3/2023
Ankonge*