

1. LILIAN NAJJEMBA
2. BAGARUKAYO BERNARD APPLICANTS

VERSUS

ATTORNEY GENERAL RESPONDENT

RULING

- a) Leave be granted to amend the plaint by substituting the 1st and 2nd Plaintiffs with **Kiddu Bruno Byakatonda, John Lubike Ssekyaajja, Ssonko Apollo Lule and Kawesi Levi** so that the head suit may proceed at the instance of the new entrants being the 1st, 2nd, 3rd and 4th Plaintiffs respectively.
- b) Leave be granted to the Applicants to add a one **Ntege Robert Victor** being the Administrator of the estate of the Late Andereya Mubito Lubike (who by 1972 was the registered proprietor of the suit land), so that the head suit may proceed with him as 5th Plaintiff.
- c) That based on the judgment on admission award of UGX. 1, 570, 963, 242 (One Billion Five Hundred Seventy Million Nine Hundred Sixty-Three Thousand Two Hundred Forty-Two shillings only) dated 11th December 2019, the Defendant proceeds to pay the new Plaintiffs the harmonized value of the suit land as of this day, inclusive of both the 30% disturbance and mesne profits for the period between 30th October 2014 up

to 18th November 2019 and with interest at the rate of 6% per annum from the date of partial judgment till payment in full.

- d) That the unresolved issue of mesne profits / imputed rent from 1972 to date less any related payments that may have already been paid and effected to the Plaintiffs for the period from 30th October 2014 be set down for hearing inter parties between the new Plaintiffs and the Defendant.
- e) Any costs of this application be provided for.

The grounds in support of this application are set out in the affidavit of the 1st Applicant Lillian Najjemba, briefly that;

- a) The Government of Uganda in 1972 forcefully took over the suit land without compensation and thereafter did not pay rent arrears to date which prompted the Applicants to institute H.C.C.S No. 477 of 2015; Lillian Najjemba & Anor vs Attorney General, for fair and adequate compensation for the suit land, special damages being loss of income, general damages and interest at a rate of 22% per annum from the date of compulsory acquisition till payment in full and costs of the suit.
- b) The registered proprietor of the suit land measuring 164.70 Hectares in 1972 was the Late Andereya Mubito Lubike. The Applicants became registered proprietors thereof on 30th October 2014.
- c) On 28th October 2021 however, the Applicants transferred their complete interest in the suit land together with all equities and liabilities to **Kiddu Bruno Byakatonda, John Lubike Ssekyajja, Ssonko Apollo Lule and Kawesi Levi** (family members of the Late Andereya Mubito Lubike) who thereby became registered as new proprietors under Instrument No. MIT.00007237.
- d) The intending 5th Plaintiff **Ntege Robert Victor** is both a biological son and administrator of the estate of the said Late Andereya Mubito Lubike who by power of attorney had covenanted with the 1st Applicant to recover for him from Government, all unpaid rent from the day it fell due in 1972 until its realization in full.
- e) Notably, at the time the Applicants transferred their interest to the said Kiddu Bruno Byakatonda, John Lubike Ssekyajja, Ssonko Apollo Lule and Kawesi Levi on 28th October 2021, judgment on admission had been entered in favor of the Applicants to a tune of UGX. 1, 570, 963, 242 (One Billion Five Hundred Seventy Million Nine Hundred Sixty-Three Thousand Two Hundred Forty-Two shillings)



- f) That the Respondent should proceed to pay the new Plaintiffs a harmonized market value of the suit land as of today, inclusive of both the 30% disturbance and mesne profits for the period between 30th October 2014 up to date and with interest at a rate of 6% per annum from the date of the judgment on admission till payment in full.
- g) That the yardstick for harmonizing the market value based on periodical appreciation of value and disturbance have been applied by the line ministry on previously settled compensations of former neighbors to the suit land per the valuation reports marked as annexure "D1" and "D2"
- h) That the Respondent should proceed to pay the said monies to the new registered proprietors pending the hearing and determination of the unresolved issue of mesne profits /imputed rent from 1972 to 18th November 2014 till payment in full.
- i) That it is in the interest of justice that this application is granted to ensure that adequate compensation is paid to the claimants.

In opposition to the application, Richard Adrole for the Chambers of the Attorney General deponed that this application is misconceived and lacks merit for the reasons that;

- a) The court entered judgement on admission on 19th December 2019 against the Respondent in a sum of UGX. 1, 570, 963, 224 as per the revised valuation report of the Chief Government Valuer
- b) The Applicants herein acquired the suit land in October 2014 and it is on that basis that the valuation and computation was reached.
- c) The Attorney General has always dealt with the Applicants who even lodged a bill of costs and an application for taxation based on the judgment on admission.
- d) This application is an attempt to alter the judgment on admission issued by court to change the material circumstances of the case.
- e) The proposed amendment of the Plaint envisaged by the Applicants introduces a new cause of action which is prejudicial to the Respondent at this stage after material evidence has been considered by the court and the Written Statement of Defense is over 5 years old.
- f) The proposed amendment if granted will unjustly deprive the Respondent of the valid defense of limitation of actions against the proposed Plaintiffs.
- g) The proposed amendment of the Plaint will not assist court to adjudicate the real issues in controversy between the parties which have already been decided by court through a judgment on admission.



- h) The proposed amendment is barred by law. A party who is not the registered proprietor / has divested interest in an estate at the time of lodging a plaint cannot maintain an Action.
- i) The proposed Plaintiffs obtained registration on the duplicate certificate of title after judgment on admission was issued and yet dealing with land which is subject to court process is an indication of fraud and unjust dealings.
- j) The Applicant's Powers of Attorney are questionable as they were belatedly registered and were not on court record at the time of lodging the Civil Suit in the High Court.
- k) That a grave injustice and colossal financial loss will be occasioned on the Government of Uganda if this application is granted as it is a deliberate attempt to defraud Government.

Representation

The Applicants were represented by M/S Kaggwa & Partners Co. Advocates. The Respondent was represented by the Chambers of the Attorney General.

Determination

Order 1 rule 1 of the Civil Procedure Rules S.I 71-1 provides for joinder of Plaintiffs as follows:

"All persons may be joined in one suit as Plaintiffs in whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist, whether jointly, severally or in the alternative, where, if those persons brought separate suits, any common question of law or fact would arise."

Order 1 rule 10 (2) of the Civil Procedure Rules 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, 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."

For parties to be joined, they must demonstrate to court that their presence is necessary for the effective and complete settlement of all questions involved in the suit. It is necessary to show either that the orders sought would legally affect the interest of that person and that it is desirable to have that person joined to avoid multiplicity of suits, or that the defendant could not effectually set up a desired defence unless that person was joined or an order made that would bind that other person. (***Departed Asians Property Custodian Board v. Jaffer Brothers Ltd [1999] I.E.A 55; See also: Gokaldas Laximidas Tanna v. Store Rose Muyinza, H.C.C.S No. 7076 of 1987 [1990 - 1991] KALR 21.***)

In the case of ***Kingori vs. Chege and Others [2002]2 KLR 243*** the court listed guiding principles when intended party is to be joined as follows. Firstly, he must be a necessary party. Secondly, he must be a proper party. Thirdly, in case of the Defendant there must be a relief flowing from the Defendant to the Plaintiff. Fourthly, ***the ultimate order or decree cannot be enforced without his presence in the matter*** (emphasis mine). Lastly his presence is necessary to enable the court effectively and completely adjudicate upon and settle all questions involved in the suit. Similarly, in the case of ***Kamau vs. Makomboki Tea Factory Ltd [2008] 1 EA 154*** the court noted that for the determination of the question of who is a necessary party there are two tests. Firstly, there must be a right to some relief against such a party in respect of the matter involved in the proceeding and secondly, it should not be possible to pass on effective decree in the absence of such a party.

The purpose of joinder of parties is therefore 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 are avoided. This application was brought by parties who seek Orders, the consequence of which affect parties (intending Plaintiffs) who are alien to this application. Certainly, any Judgments, Orders, directions given by the Court in this application and /or the head suit will affect Intending Plaintiffs as the new registered owners of the suit land. It therefore goes without saying that they would qualify to be called "necessary parties" within the meaning of the law so as to enable the Court determine the issues herein conclusively save that they have chosen, either willfully or by mistake of their advocates, from participating in the prosecution of this application. The said

intending Plaintiffs are not parties to this application notwithstanding that court gave clear directions on 25th October, 2022 that the intending Plaintiffs should file a formal application for addition as parties in the head suit.

From the Court record, when the parties appeared in court on 25th October 2022, Counsel for the current Applicants informed Court that the Applicants herein had reverted their interest in the suit land to the intending Plaintiffs and therefore no longer had interest in the matter. A new Advocate also requested to make an oral Application for the intending plaintiffs to be added as parties with a view of taking over prosecution of the main suit from the Applicants herein. Consequently, this Court directed that the new intending Plaintiffs make a formal Application requesting Court to be added as plaintiffs in the main suit. However, it is surprising that this application that should have been instituted by the intended Plaintiffs themselves was instead instituted by the current Applicants.

It is trite in law that a plaintiff is '**dominus litis**'. That is, a plaintiff determines who he/she wants to sue and not to sue. Therefore, for the current Applicants to purport to bring this application is to assume '**dominus litis**' on behalf on the intended Plaintiffs without clear instructions to do so. It is for the intended Plaintiffs to show interest to join and continue the head suit to avoid a situation where the purported Applicants bind the intending Plaintiffs against their wishes to continue pursuing the head suit. This Court can only discern this interest from an Application made by the intending plaintiffs and the reasons for joining the suit as plaintiffs which this Court would ideally find in the affidavit(s) in support of their application. This is not the case here. How then can this court ascertain that the purported intending plaintiffs have interest in pursuing the head suit or wish to maintain the claim (whether as a whole or in part) against the defendant in the head suit? In the case of **Santana Fernandes vs. Kaala Arjan & Sons & 2 Or's [1961] EA 693** it was held that a Plaintiff being the dominus litis, cannot be compelled to sue a person, for damages, whom he does not wish to sue.

If this Court allows this application in its current form, the likely effect of doing so, would be to making of Court orders compelling the purported intended plaintiff to take over the head suit against a defendant whom they have not formally expressed interest to sue. In addition, the general effect of so doing, would be to make Court orders for or against parties (purported

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intended plaintiffs) who have not formally expressed interest to be bound by such orders nor participated in the proceedings before Court. Therefore, where the intending Plaintiffs have not formally brought the application themselves, the net effect is that they cannot be made to pursue the head suit where there is no formal application to be joined as parties to such a suit because in the event that they lose the case against the opposite party they could be condemned to costs in a case they did not express interest to join. **See; Santana Fernandes vs. Kaala Arjan & Sons & 2 Ors [1961] EA 693.**

Therefore, in the end result, I am disinclined to grant this application for the reasons afore stated.

Consequently, this application is dismissed with costs to the Respondent.

Dated at Kampala this 9th day of February 2023.



Flavian Zeija (PhD)

PRINCIPAL JUDGE