

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**(LAND DIVISION)**  
**MISCELLANEOUS APPLICATION NO. 0896 OF 2024**  
**ARISING FROM CIVIL SUIT NO. 620 OF 2021**

**SSEKUBWA 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 :::::::::::::::::::::::::::::: RESPONDENTS**
- 4. MUKALAZI JIMMY**
- 5. NANKYA ELINA**
- 6. DR. EMMY TUGUME BERAHO**
- 7. DR. MONICA BERAHO KARUHANGA**
- 8. NINA INTERIORS LIMITED**

**BEFORE: HON. LADY JUSTICE NALUZZE AISHA BATALA**

**RULING.**

**Introduction:**

1. The Application is brought Under Order 7 rule 11 (d), (e), and rule 19 and Section 98 of the Civil Procedure Act Cap 71, Section 33 & 38 Judicature Act cap 13 for orders that;

- i) The plaint in Civil Suit No. 620 of 2021 be rejected and/or struck out.



ii) Costs of this application be provided for.

**Background;**

2. The 1<sup>st</sup> Respondent instituted Civil Suit No. 620 of 2021 seeking declarations and orders that;

a) A declaration that the plaintiff (Now 1<sup>st</sup> Respondent ) is the lawful owner of Kibanja and or bonafide occupant of 2.5 acres out of land comprised in Kibuga Block 28 Plots 1244,1245,1246 & 1247 formerly Plot 540 at Makerere hill, A declaration that the 1<sup>st</sup> Defendant (Now 2<sup>nd</sup> Respondent) dealings with the 2<sup>nd</sup> -4<sup>th</sup> defendants in land comprised in Kibuga Block 28 Plots 1244,1245,1246 & 1247 formerly plot 540 at Makerere hill without due consideration of the judgement in HCCS No. 95 of 2009 and execution of the decree therefrom and all other subsequent dealings by the 5<sup>th</sup> -7<sup>th</sup> defendants are null and void ab initio.

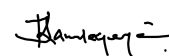
b) A declaration that the wanton eviction without an order of Court of the plaintiff from his Kibanja by the defendants was unlawful.



- c) An order reinstating the plaintiff on his Kibanja and quite use of the same without any disturbances from the defendants.
- d) An order for a permanent injunction restraining the defendants, their agents, servants, workers and or any other persons working under their authority from disturbing the plaintiff from, quiet enjoyment and or utilization of his Kibanja measuring approximately 2.5 acres comprised in Kibuga Block 28 Plots 1244,1245,1246 & 1247 formerly Plot 540 at Makerere hill.
- e) General damages, costs and any other remedies.

3. That the applicant applied to Court vide MA No. 3070 to be added as a Co defendant to Civil Suit No. 620 of 2021 to which order the 1<sup>st</sup> Respondent has not complied to date. The Applicant further contends that all titles forming the basis of the plaintiff's claim were cancelled vide MA No. 223 of 2018 which renders such suit a nullity, moot, vexatious and frivolous hence this application to reject and or strike out the plaint.

**Applicant's evidence;**



4. The grounds on which the application is based are contained in the Chamber Summons and affidavit deposed by **SSEKUBWA WILBERFORCE MPINDI**, the Applicant and briefly are:

- i) That I am a defendant vide Civil Suit No. 620 of 2021 through which the 1<sup>st</sup> Respondent sued the 2<sup>nd</sup> -8<sup>th</sup> Respondents for amongst other orders, an order for recovery of land known as Kibuga Block 28 Plot 540 at Makerere.
- ii) That the 1<sup>st</sup> Respondent sued the 2<sup>nd</sup> – 8<sup>th</sup> Respondents seeking various remedies including recovery of Kibanja measuring 2.5 acres in land comprised in Kibuga Block 28 Plots 1244, 1245, 1246 and 1247 at Makerere.
- iii) That am aware that this Court in MA No. 223 of 2018 which I filed against the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents and Court made orders that all dealing and transactions thereon were null and void, that the title of the land acquired by the applicant is to be restored and transfer the same into his names as per decree in Civil Suit No. 500 of 2013, that the titles created out of the suit land were irregularly created and therefore cancelled and costs of the application.



- iv) That the Respondents were made aware of the said ruling but none of them challenged it. That this Court previously and finally adjudicated upon the certificates of title for Kibuga Block 28 Plots 1244,1245,1246 & 1247 and made an order cancelling them thus the same cannot form basis of legal relief or challenge by any of the parties under Civil Suit No. 620 of 2021 thus rendering such suit a nullity, moot, vexatious and frivolous.
- v) That the 1<sup>st</sup> Respondent has hitherto not shown interest in prosecuting Civil Suit No. 620 of 2021 as he has willfully neglected the orders of this court vide MA No. 3070 of 2023 requiring him to amend the plaint, add me as a party and serve the same hence he is in contempt.
- vi) That the plaint as presented by the 1<sup>st</sup> respondent against the 2<sup>nd</sup> – 8<sup>th</sup> Respondent is barred by limitation since its premised-on illegalities which Court cannot sanction once brought to its attention.
- vii) That Civil Suit No. 620 of 2021 should be struck out for being barred in law and for consequential orders.



### **1<sup>st</sup> Respondent's Evidence**

5. The 1<sup>st</sup> Respondent filed an affidavit in reply deponed by **JACKSON TUGUME** a lawful attorney, which briefly states as follows;

- i) The Ruling in MA No. 3070 of 2023 shows that the 1<sup>st</sup> Respondent was not represented therefore he was not aware it had been granted and neither was he served with an order in order to comply with the same.
- ii) The contents of paragraph 3 of the affidavit in support are admitted as the 2<sup>nd</sup> Respondent is sued as the current owner of the suit land but the 3<sup>rd</sup> to 8<sup>th</sup> Respondents are sued as people who have flouted and disobeyed the Court order in HCCS No. 95 of 2009 and the Respondents confirms that the 3<sup>rd</sup> to 8<sup>th</sup> Respondents have no interest in the suit land.
- iii) That the cancelled titles can form basis for declaratory orders and the 1<sup>st</sup> Respondent's suit is for declaratory orders.
- iv) The 1<sup>st</sup> Respondent's suit is not a nullity since he claims title to land against the 2<sup>nd</sup> Respondent and his interest arose in 2010 long before the Applicant acquired



interest in the suit land if any. That the Respondents have continued to interfere with the 1<sup>st</sup> Respondents claims despite the Court orders cancelling their certificates of title.

- v) That the illegalities in the 1<sup>st</sup> Respondent's plaint are not demonstrated in the affidavit in support therefore the 1<sup>st</sup> Respondent cannot properly respond to the said bare statements.
- vi) The suit land which Court directed to be restored to Kibuga Block 28 Plot 540 does not belong to the applicant and he has never been in possession thereof.
- vii) In rejoinder the Applicant stated that Civil Suit No. 620 of 2021 no longer has any legal force or effect based on the fact that the same was filed through lawful attorneys, Namulindwa Joy Nabyaliro and Byamukama Levister whose powers of attorney have since been revoked thereby leaving the suit unsustainable and equally revoked.
- viii) That the 1<sup>st</sup> Respondent forfeited his alleged Kibanja when he agreed with the 2<sup>nd</sup> Respondent to upgrade the



said Kibanja to Mailo interest and authorized to sell the upgraded interest to any willing buyer.

**2<sup>nd</sup> Respondent's evidence**

6. The 2<sup>nd</sup> Respondent, **KUTEESA MIRIAM** filed an affidavit in reply, which briefly states as follows;

- i) That this application as presented is frivolous and vexatious, the affidavit in support of the application is filled with glaring falsehoods and the same should be struck off court record.
- ii) The application as presented has nothing to do with me as I am not the one who filed Civil Suit No. 620 of 2021 which the applicant seeks Court to reject and strike off the record.
- iii) The 1<sup>st</sup> Respondent did not seek recovery of the entire land known as Kibuga Block 28 Plot 540 at Makerere but only sought a declaration that he is the lawful owner of a Kibanja on the suit land measuring 2.5 acres.
- iv) The contents of paragraph 3 are admitted in as far as registration of titles in the names of the respondents mentioned therein is concerned and I add that the





applicant has never been registered on the title to the suit land.

- v) In rejoinder the Applicant stated that he duly purchased all the suit land measuring 5.15 acres from all necessary owners and paid the underlying consideration in full. That the 1<sup>st</sup> and 2<sup>nd</sup> Respondents are in cohorts of fraudulently entering into a consent for this Court's endorsement well knowing that the land subject to the consent is wholly mine.

**3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents' evidence;**

7. The 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents filed an affidavit in reply through **JOSHUA MUKALAZI KIZITO** with authority to depone on behalf of others, which briefly states as follows;

- i) That the applicant is not a party to the suit since the orders directing that he be added as a party have never been complied with and thus has no locus standi to initiate any proceedings in this suit before he is added as a party therefore, a preliminary objection shall be raised to that effect with a prayer that this application be summarily struck off with costs to the Respondent.



- ii) That the issues raised by the Applicant in the application are matters of evidence which require a fully conducted trial as they cannot be determined based on affidavit evidence and the Applicant has to appear in trial and formally adduce all the documentary evidence not in this application.
- iii) That the applicant is trying to execute orders and decrees between him and other parties and not the plaintiff in this suit which is irregular.
- iv) That if the Applicant knew that the decrees and orders, he holds finally determined his rights to the suit land, he should have executed those orders and decrees and not applying to be added as a party to this suit.
- v) That there are orders of the Court of Appeal between the 2<sup>nd</sup> Respondent, myself, with the 3<sup>rd</sup> and 5<sup>th</sup> Respondents which finally determined the rights of the parties relating to land formerly comprised in Kibuga Block 28 Plot 540 at Makerere.
- vi) In rejoinder the Applicant states that the assertion that he is not party to Civil Suit No. 620 of 2021 is superfluous and academic and does not deny him locus

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as it was the 1<sup>st</sup> Respondent that was supposed to comply with the order adding the Applicant as a party thereto. That the Applicant became a party on the day the order to add him was issued and that adding him to the plaint is a mere matter of form and not substance thus the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents cannot assert that because of this I don't have locus standi to bring this application.

- vii) That there is no need for trial over the legal matters that are raised in the application which are that, the suit land subject to litigation as their file and status was long ago sealed by not only this court but even the superior Courts to it and that Civil Suit 620 of 202 is vexatious, moot and/ or academic.
- viii) That my application is not intended to execute orders and decrees but to bring this Honourable Court's attention to the above Court process and adjudication between the parties to Civil Suit No. 620 of 2021 to defeat my already decreed rights over the suit land.

**6<sup>th</sup> and 7<sup>th</sup> Respondents evidence**



8. The 6<sup>th</sup> and 7<sup>th</sup> Respondents filed an affidavit in reply through **EMMY TUGUME BERAHO** with authority to depone on behalf of the 7<sup>th</sup> Respondent, which briefly states as follows;

- i) That the Applicant's application is fatally defective with no valid evidence and thus liable to be struck out, the Applicant is not yet a party to the suit and the orders of adding him as a party have never been complied with, that if its indeed true that the Applicant received Court orders in the subject land that have not been implemented by the Respondents then the applicant has to go back to the same Court for execution and contempt of Court Proceedings.
- ii) That matters of determination of land rights and ownership require an elaborate analysis of evidence and examination of witnesses which cannot be attained by such an application.
- iii) That I and the 7<sup>th</sup> Respondents have never dealt with the Applicant nor have we ever known about his alleged claim prior to the purchase of our land.
- iv) That there is no legal basis for bringing this application since I and the 7<sup>th</sup> Respondent are not only the current

registered proprietors but also currently in full possession of our land (Plot 1244) which we purchased bonafide for valuable consideration.

- v) That the Applicant has filed this Application against me, the 7<sup>th</sup> Respondent and others seeking to strike out Civil Suit No. 620 of 2021 but again seeks to force the implementation of Court directives in which neither me nor the 7<sup>th</sup> Respondent were a party and which as a consequence will have our title cancelled without a hearing on the merits of our proprietorship.
- vi) In rejoinder, the Applicant states that he was made a party to the present Suit No. 620 of 2021 vide an order of Court and the 1<sup>st</sup> Respondent's refusal to amend his plaint to insert my name as a defendant is a mere form that cannot defeat this Court's order to add me.
- vii) That the Applicant's entitlement to the suit land arises from not only a valid sale agreement and other instruments of acquisition but has also been confirmed by this Court through the consent judgement in Civil Suit No. 500 of 2013 as well as MA No. 223 of 2018.



**Representation;**

9. The Applicant is represented by Mr. Benard Mutyaba of M/s Maldes Advocates, the 1<sup>st</sup> Respondent is represented by Mr. Brian Otheino and Isabirye Isaac of Alliance Advocates, 2<sup>nd</sup> Respondent is represented by Mr. Mugalula Jamil of M/s Jamil Mugalula, the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents are represented by Simon Kiiza of M/s Kiiza & Co. Advocates and the 6<sup>th</sup> and 7<sup>th</sup> Respondents are represented by Mr. Magala Ibrahim of M/s Nabukenya Mulalira & Co. Advocates

10. The 8<sup>th</sup> Respondent did not oppose this Application. The rest of the parties filed their respective pleadings and submissions which I have considered in the determination of this Application.

**Issues for determination;**

11. The Respondents in their submissions raised various issues and preliminary points however for the determination of all issues surrounding this application, this Court considers it fit to resolve the issue as raised below.

**Whether this application is proper before this Honourable Court?**

12. Counsel for the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondent raised a preliminary point of law that the Applicant does not have locus

standi to bring the instant application. That the order issued vide MA No.3070 of 2023 to amend the plaint and add the Applicant as co-defendant was never complied with thus the Applicant not being a party to the Civil Suit No. 620 of 2021 he cannot apply to have the plaint rejected or struck out.

13. The applicant however, averred that he became a party to Civil Suit No. 620 of 2021 at the time the order to add him was issued and that the 1<sup>st</sup> Respondent's failure to add him as a party in compliance to the said order amounts to contempt. The applicant is a party to the said suit by virtue of the order issued vide MA No. 3070 of 2023 thus the said argument cannot stand.

14. Locus standi is typically a point of law determination of which can dispose of this entire application without delving into its merits.

15. Locus standi literally means a place of standing. It means a right to appear in Court, and, conversely, to say that a person has a right to appear or be heard in a specified proceeding. **(See;Njau & others v City Council of Nairobi [1976-1985]1 EA 397 at 407 as cited in Dima Domnic Poro v Inyani Godfrey & Apiku Martin CA No. 0017 of 2016).**



16. Whereas it is true that this Honourable Court made orders to have the Applicant added as a defendant to Civil Suit No. 620 of 2021 vide MA No. 3070 of 2023, with timelines within which to comply with the said orders.

17. The Applicant admits the fact that he has not yet been added to Civil Suit No. 620 of 2021 despite the existence of the order but still brings this application to reject and or strike out the plaint.

18. Order 6 rule 30 of the Civil Procedure Act provides as below;

**Striking out Pleading.**

(1) The Court may, upon application, order any pleading to be struck out on the ground that it discloses no reasonable cause of action or answer and, in any such case, or in case of the suit or defence being shown by the pleadings to be frivolous and vexatious, may order the suit to be stayed or dismissed or judgement to be entered accordingly as may be just.

19. From the reading of this order, the framers intended for it to be relied upon by parties to a suit but did not envisage third parties that are not party to the suit in question.

20. The plaintiff being the master of the suit, he is free to sue whoever he/she feels can claim relief from. The 1<sup>st</sup> Respondent being the plaintiff in Civil Suit No. 620 of 2021 had a right to

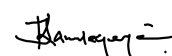


sue the Applicant had he felt he could claim relief from him but he did not but instead the Applicant applied to be added as a party and before the same could be done he seeks to strike out a plaint in a suit to which he is not a party.

21. A person that is not party to a suit cannot seek orders to strike out pleadings in a suit in which he is not involved more so on grounds of it being frivolous and vexatious. The Applicant seeks to strike out a plaint in a suit to which he is not party in a bid to secure the decrees from which he allegedly hails interest. Suffice to say, that the said decrees do not confer interest of the whole suit land to him as alleged.

22. The applicant made an application to be added as a party to the Civil Suit No. 620 of 2021 and the same was granted on grounds that he had an interest in part of the suit land and it was ordered by this Honourable Court that the plaintiff amends the plaint to add the Applicant who had to file a defence to the plaintiff's claims therein.

23. The Applicant applying to strike out the plaint before he is even added onto the suit only renders this application not only incompetent but also premature aimed at disenfranchising the respondents of their respective claims in the suit land which

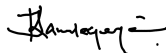


they seek to iron out in Civil Suit No. 620 of 2021 thus rendering this application improper before this Honourable Court.

24. Further this honorable court granting the prayers of the applicant would be shutting down the doors of justice to other parties who claim interest in the suit, this court is of the view that when the applicant sought to be added as a party to the main suit he intended to have his rights fully determined by this court, something that is to be achieved by determining the suit on its own merit.

25. For the afore going reasons, this application stands dismissed with orders as to costs. The Applicant should employ other legal remedies to enforce Court Orders issued in MA No. 3070 of 2023 so as to have locus to challenge the plaint in the current suit.

**I SO ORDER.**



**NALUZZE AISHA BATALA**

**JUDGE**

**27/06/2024**