

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**LAND DIVISION**  
**MISCELLANEOUS APPLICATION NO.3064 OF 2023**  
**(ARISING FROM CIVIL SUIT NO. 0984 OF 2023)**

**SENKUBUGE ISAAC ::: APPLICANT**

**VERSUS**

- 1. NAKANJAKO LETICIA**  
**2. NANSUBUGA PEACE ::: RESPONDENTS**  
**3. KIZITO ELIJAH MUBIRU**

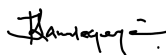
**BEFORE: HON. LADY JUSTICE NALUZZE AISHA BATALA**

**RULING.**

**Introduction:**

1. This was an application by notice of motion brought under Section 98 of the Civil Procedure Act, Section 33 of the Judicature Act Cap 13, and Order 1 rules 10(2) & 13 of the Civil Procedure Rules (CPR) for orders that: -

- i) That the Applicant be joined as a defendant under HCCS No. 0984 Of 2023: Nakanjako Leticia, Nansubuga Peace & Kizito Elijah Mubiru Versus Attorney General, Kagoro



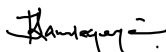
Naboth, Ndiwalana Patrick, Segaluma Derrick, Nsubuga  
Roscoe & Commissioner Land Registration

- ii) The costs of this application be in the cause.

**Background;**

2. The Respondents instituted HCCS No. 0984 of 2023 in this Honorable court seeking orders inter alia:

- i. A declaration that the plaintiffs are the owners of the land comprised in Kyadondo Block 223 Plot 2461 at Namugongo
- ii. A declaration that the certificate of title described as Kyadondo Block 223 Plot 2461 at Namugongo was procured and obtained fraudulently and intermeddling with the estate of the deceased.
- iii. A declaration that the defendants have continuously and illegally trespassed on the plaintiff's land.
- iv. An order of cancellation of title described as Kyadondo Block 223 plot 2461 at Namugongo.
- v. Alternatively, an order cancelling either the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> defendant's names from the title and substituting them with the plaintiff's names as the lawful owners.



3. That the Applicant is the registered proprietor of land comprised in Kyadondo Block 223 Plot 2461 at Namugongo and yet he is not party to the suit and therefore wishes to join the same as a defendant thus this application.

**Applicant's evidence;**

4. The grounds of the application are contained in the affidavit in support of the application deposed by **SSENKUBUGE ISAAC** the Applicant, and are briefly that: -

- i) That the Applicant is the current registered proprietor of the land comprised in Kyadondo Block 223 Plot 2461 at Namugongo which is a subject of dispute in HCCS No. 984 of 2023 to which he is not a party or named as a defendant.
- ii) That the respondents/plaintiffs sued Ndiwalana Patrick who claims no interest in the suit land but was only acting as the Applicant's agent.
- iii) That the Applicant has a plausible defence to the respondents' claims over the suit land and that to avoid multiplicity of suit and litigating on the same matter the Court should grant this application for him to join the suit as a defendant.



**Respondent's evidence;**

5. The application is opposed to by an affidavit in reply deposed by **NANSUBUGA PEACE** the 2<sup>nd</sup> respondent which briefly states as follows;

- i) That the applicant's claims of being the registered proprietor of the suit land are baseless since the respondents are the bonafide proprietors of the same.
- ii) That Ndiwalana sued them before the Deputy RDC in his personal capacity and the appointment letter referred to by the applicant is not authentic and it did not confer any power to handle any dealings in the suit land on behalf of the applicant.

**Representation;**


6. The Applicant was represented by Mr. Nyonyintono Asuman of M/s Signature Co Advocates whereas the Respondent was represented by Dr. Akampumuza of M/s Akampumuza & Co. Advocates. Both parties filed their affidavits, the respondent conducted a cross-examination of the deponent to the affidavit in support of the application. I have also considered the written submissions filed by the Applicant in support of this application in determining this application.

**Issues for determination;**

- i) ***Whether the applicant should be added to HCCS No. 984 of 2023 as a defendant?***

**Resolution and determination of the issue;**

7. It is trite law and a celebrated principle that a Plaintiff is **Dominus Litis** in other words he is the master of the suit and therefore he cannot be compelled to fight against whom he does not claim any relief.
8. However it is the ultimate decision of Court to decide whether the Applicant's presence in the suit is required or not for effective and conclusive adjudication of the suit, Order 1 rule 10 (2) of the civil procedure rules SI 71-1 provides; ***"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 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***

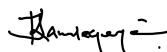


***completely to adjudicate upon and settle all questions involved in the suit, be added.”***

**9.** Despite the plaintiff being Dominus litis, the above provision is equally available for Court and the same can on its own action join any party as a plaintiff or defendant.


**10.** For a person to be joined on the ground that his/her presence in the suit is necessary for effectual and complete settlement of all questions involved in the suit, the person must show either that the orders which the plaintiff seeks in the suit would legally affect the interest of that person or that it is desirable for avoidance of multiplicity of suits so that he/she is bound by the decision of the Court in that suit. ***(See; Ayigihugu & Co Advocates v Kidza [11985] HCB 46 and Walimu Cooperative savings and credit union v Okumu Benjamin & Komakech Amos Paito MA No. 101 of 2022)***

**11.** In the instant application, the Applicant seeks to join HCCS No. 984 of 2023 as a defendant on grounds that he is the registered proprietor of the suit land comprised in Kyadondo Block 223 Plot 2461 at Namugongo and adduced uncontroverted evidence in his



affidavit in support, a certificated of title to the suit land duly registered into his names as per **Annexure B1**.

- 12.** The Respondents/plaintiffs in their plaint seek prayers like cancellation of the various entries and the certificate of title itself which orders clearly affect the Applicant's/defendant's interest in the suit land as the current registered proprietor.
- 13.** Court orders should not be issued in vain, proceedings to cancel a certificate of title where the registered proprietor is not a party to the proceedings not only contravenes the cardinal principles of a fair hearing as enshrined under Article 28 of the Constitution of the Republic of Uganda 1995, but also renders the orders in the main suit in vain and hence the same becomes a mere moot.
- 14.** If such orders are issued against a person who is not a registered proprietor, such orders will be issued in vain and it would necessitate the plaintiffs to file another suit against the applicant which would protract litigation and create multiplicity of suits.
- 15.** The main purpose and aim of joining parties is to enable Court to deal with the matter brought before it and to avoid multiplicity

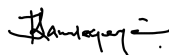


of proceedings. **(See; Kololo curing Co. ltd v West Mengo Co-op Union (1981) HCB 29)**

**16.** Therefore, for the above stated reasons it is in the interest of justice and to traverse all issues in controversy in the main suit that the applicant is added as a defendant in HCCS No. 984 of 2023.

**17.** In the premises, I am satisfied that the Applicant has justified why he should be added to the proceeding in HCCS No. 984 of 2023 as a defendant. The application is granted with the following orders: -

- i) The Respondents/plaintiffs are hereby directed to amend their pleadings accordingly and serve the defendants including the Applicant within a period of seven (7) days from the date of this ruling.
- ii) The rest of the pleadings shall be filed and served as per the timelines set out in the Civil Procedure Rules.
- iii) The costs of this application shall be in the main cause.





**I SO ORDER.**



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**NALUZZE AISHA BATALA**

**JUDGE**

**30<sup>th</sup>/01/2024**