

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**LAND DIVISION**  
**MISCELLANEOUS APPLICATION NO. 858 OF 2012**

*Arising From Civil Suit No.275 /2011*

**YONA IGA [ Administrator of the  
estate of the late Rebecca Evelyn  
Namatovu].....APPLICANT**

**VERSUS**

**HAJI ABDUL KARIM NSANJA.....RESPONDENT**

**BEFORE HON. LADY JUSTICE PERCY NIGHT TUHAISE**

**RULING**

This was an application by Notice of Motion brought under section 98 of the Civil Procedure Act and Orders 1 rules 3 & 5 and 52 rules 1, 2 &3 of the CPR for orders that:-

- (a) The applicant be joined as a co defendant in civil suit no. 275 of 2011.
- (b) Costs of the application be provided for.

The application is supported by the affidavits of **Yona Iga** the applicant and is based on the grounds that:-

- a) The applicant is the lawful administrator of the estate of the late Rebecca Evelyn Namatovu.
- b) The suit property constitutes the estate of the late Rebecca Evelyn Namatovu and should be administered by the applicant only who is the holder of grant of probate.
- c) The respondent fraudulently applied for and obtained letters of administration to the said estate and pursuant to the same he got his name registered on the certificate of title of the suit property.
- d) The Commissioner of Lands was notified of the respondent's fraudulent misdeeds and after proof of the said fraud, his name was cancelled from the title thereby restating the deceased's names as registered proprietor.
- e) It is just and equitable that the applicant be joined as defendant to the above suit in order to effectively determine the said matter and avoid multiplicity of actions.

The application was opposed by **Haji Abdul Karim Nsanja Saava** the respondent who filed an affidavit in reply.

I have looked at the application and all affidavits on this matter, including the pleadings in civil suit no. 275 of 2011. I have also analysed the submissions of both Counsel and the law applicable to the situation.

The affidavit evidence of the applicant is that he is the co administrator of the estate of the late Rebecca Evelyn Namatovu who died testate and in respect of whose estate the applicant was granted probate of Namatovu's will. The applicant avers that the respondent fraudulently obtained letters of administration to the late Namatovu's estate by misrepresenting to court that he was a biological brother to the deceased Namatovu. He then applied and got registered on the certificate of title to the suit land comprised in Block 369 plot 1 at Busiro Bukabira as administrator of the estate of the late Namatovu. The applicant conducted an investigation and discovered that the respondent forged the death certificate and certificate of no objection to obtain the letters of administration. The applicant lodged a complaint to the Commissioner Land Registration which led to the cancellation of the respondent's names and restoration of the *status quo*. The respondent challenged the cancellation by filing civil suit no. 275 of 2011 (main suit) against the Chief Registrar of Titles challenging the cancellation. The applicant has filed civil suit no. 172 of 2012 against the respondent praying for revocation of his letters of administration.

The applicant avers in his supporting affidavit that if the main suit is decided in the respondent's favour it will have a grave and negative impact on him as the true administrator of the deceased's estate since the respondent is not related to the deceased. He also avers that he has a complete defence to the main suit and his being joined as a co defendant to the main suit will avoid multiplicity of proceedings. Counsel for the applicant submitted that joining the applicant as co defendant to the main suit will not prejudice the respondent's case but will enable court to effectually and completely adjudicate upon the issues in the main suit since the applicant could file another suit against the respondent. She cited **Inspector General of Government V Blessed Constructors Ltd MA 73/2007 Arising From HCT 00 CC CS 1026/2004**, unreported, to support her submissions.

The affidavit in reply of **Haji Abdul Karim Nsanja Saava** is briefly that he was not the administrator of the estate of the late Rebecca Evelyn Namatovu but is the administrator of the estate of the late Labeca Everini Naava Namatovu vide a grant issued in Administrative Cause No. 243 of 2009 in respect of which he transferred the suit land into his names as administrator. He avers that the main suit was filed in that capacity against the Chief Registrar of Titles for wrongfully cancelling his names from the title to the suit land, and that judgment in the suit has already been given. He averred that the application should have been made before trial not after judgment has already been given.

Counsel for the respondent submitted that the application is a total abuse of court process as the respondent has the right to sue whom he chooses and the Chief Registrar of Titles was sued for the wrongful cancellation of the respondent's title to the suit property to which the applicant was not party. He also submitted that since the applicant averred that he had filed a suit for revocation of the respondent's letters of administration the said suit is good enough to dispose of his claim, and that it would be introducing a new cause of action by adding the respondent to the main suit. Thirdly, he submitted that making the application at a time when an interlocutory judgment had already been entered against the defendant in the main suit will prejudice the respondent's case as it would tantamount to varying court's orders. He prayed court to dismiss the application with costs. The applicant's Counsel in her submissions in reply however argued that the interlocutory judgment was entered against the Chief Registrar of Titles and does not affect the applicant's rights as administrator of the estate Rebecca Evelyn Namatovu.

I will first address the submissions of the respondent's Counsel that making the application at a time when an interlocutory judgment had already been entered against the defendant in the main suit will prejudice the respondent's case as it would tantamount to varying court's orders. The record indicates that the instant application was filed on 22/10/2012 while the application for interlocutory judgment was filed on 13/11/2012. Thus the application by the applicant to be added as a party was already on the court file when the application for interlocutory judgment was filed. In my opinion the court registrar should not have entered an interlocutory judgment against the sole defendant to the suit and sent the matter for formal proof when there was a pending application to have the applicant added as a co – defendant to the same suit. The application should have been disposed of first before entering an interlocutory judgment against the Chief Registrar of Titles and sending the suit to this court for formal proof.

Section 33 of the Judicature Act enjoins this court to grant absolutely or on such terms and conditions as it thinks just all such remedies as any of the parties to a cause or matter is entitled to in any legal or equitable claim properly brought before it, so that, as far as possible all matters in controversy between the parties may be completely and finally determined and all multiplicities of legal proceedings concerning any of those matters avoided. In addition, section 14(2) of the Judicature Act empowers this court to exercise its jurisdiction in conformity with principles of justice, equity and good conscience where there is no express law or rule applicable.

In light of the foregoing provisions, I will not turn a blind eye to the fact that the interlocutory judgment was prematurely obtained from this court when there was a pending application to add a party to the same suit. It will be a miscarriage of justice if this court allowed it to pass unchecked after having identified it. Though it is true that the application is being heard at a time when an interlocutory judgment had already been entered against the defendant in the main suit, the fact remains that the application to add a

party was made earlier than the application for interlocutory judgement was entered. The interlocutory judgement was entered while the application to add the applicant to the suit was still pending. The respondent averred that the application should have been made before trial not after judgment has already been given. It must be noted however that in this matter there was no such thing as a trial but only an entry of an interlocutory judgement against the Chief Registrar of Titles who was the sole defendant in the matter.

Order 1 rule 3 of the CPR provides as follows:-

***“All persons may be joined as defendants against 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 separate suits were brought against those persons, any common questions of law or fact would arise.”***

The applicant in this case avers that he is the lawful administrator of the estate of Rebecca Evelyn Namatovu. This is evidenced by a copy of the grant of letters of administration attached to his supporting affidavit as annexure **B**. The suit land is shown in annexure **D** to the applicant's supporting affidavit to be comprised in Block 369 plot 1 at Busiro Bukabira registered in the names of Everini Labeka Nava Namatovu. The applicant avers in paragraph 8 of his supporting affidavit that the Registrar of Titles/Commissioner Land Registration cancelled the respondent's names from the suit land based on a complaint he (the applicant) lodged to the land office. This evidence is not rebutted by the respondent. Considering that this is the same land that the applicant is administering, and the same land from which the respondent/plaintiff's proprietorship was cancelled following the applicant's complaint to the Chief Registrar of Titles, this would make the applicant an interested party to the main suit.

It would in my opinion be superficial to separate the alleged interests of the applicant to the suit land from those of the Chief Registrar of Titles who was merely performing his /her duties on request by the applicant when he/she proceeded to cancel the respondent from the title. It is in that light that I would not agree with the respondent's Counsel's submissions that the respondent has the right to sue whom he chooses and the Chief Registrar of Titles was sued for the wrongful cancellation of the respondent's title to the suit property to which the applicant was not party.

If anything prudence would dictate to the respondent to have sued the applicant together with the Chief Registrar of Titles instead of suing the latter alone since the applicant claims proprietary interest in the property by virtue of his being the administrator of the estate to which the suit land falls. Secondly the said applicant is the cause of the said respondent's cancellation from the title to the suit land by the Chief Registrar of Titles. It is my opinion that this matter would be defeated by the non joinder of the applicant to the

suit as the said applicant ought to have been sued by the respondent together with the Chief Registrar of Titles in the first place. In my opinion, it would be haphazard and prejudicial to the applicant's case to proceed to have the case proceed for formal proof against the Chief Registrar of Titles when the applicant who moved the said officer to cancel the title has indicated interest in being joined as a party to the suit.

Consequently, considering that the applicant cannot call himself as a witness, nor can he add himself to the suit as a third party, the most appropriate action would be for a party whose interest would be directly affected by the decision to move court to exercise its discretion to add such party as a person whose presence before court may be necessary for the effective and complete adjudication upon and settlement of all the issues before it. See **The Inspectorate of Government V Blessed Constructors Ltd MA 73/2007 Arising From HCT 00 CC CS 1026/2004.**

In my opinion, applying the criteria set out in Order 1 rule 3 of the CPR, the applicant claims a right of relief against the respondent. If a separate suit, other than civil suit no. 275 of 2011, was brought by the applicant against the respondent in respect of the same suit property, common questions of law and fact would arise. Addressing such suits separately would lead to multiplicity of suits. I find that it is necessary that the applicant be joined as a co defendant in civil suit no. 275 of 2011 so that all questions arising out of the dispute can be resolved at once. The applicant could rightly be joined as a co defendant in civil suit no. 275 of 2011 under Order 1 rule 3 of the CPR.

In the premises, and on the foregoing authorities, I would allow this application. The applicant is to be joined as a co defendant in civil suit no. 275 of 2011. In the interests of justice, although there is an interlocutory judgement against the Chief Registrar of Titles who was the sole defendant to the suit, all issues to the dispute can only be sufficiently answered if the person claiming proprietary interest in the suit property is allowed to be joined as a party and present his case. It would greatly prejudice the applicant if this suit just proceeds to formal proof against the Registrar of Titles and leaves out the person claiming proprietary interest in the suit property especially after the peculiarities of how this case was made to proceed to formal proof have been brought out and considered by this court. The plaint should be amended accordingly and served on the applicant as co defendant in civil suit no. 275 of 2011 so that he files a defence within the required time and the suit proceeds to trial.

Since the applicant has been added as a party to the suit upon his own interest, each party will bear their own costs.

**Dated at Kampala** this 21<sup>st</sup> day of March 2013.

Percy Night Tuhaise.

**JUDGE.**