

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT JINJA**

**MISC. APPLICATION NO. 186 OF 2012
ARISING FROM CIVIL SUIT NO. 172 OF 2012**

**KATO FRED MAZINGA.....APPLICANT/APPLICANT
VERSUS**

EMMANUEL LUKWAJJU.....RESPONDENT/PLAINTIFF

AND

- 1. KYAGGWE COFFEE CURING ESTATE LTD.**
- 2. COMMISSIONER LAND REGISTRATION...RESPONDENTS**

BEFORE: THE HON. JUSTICE GODFREY NAMUNDI

RULING

This Application seeks orders that the Applicant be added as a Defendant to the main suit as a party to all matters arising therefrom.

In the alternative, that the presence of the Applicant is necessary in order to enable court to adjudicate and settle all questions involved in the main suit.

The background to this Application is that the Respondent-Emmanuel Lukwajju who is the Plaintiff in the head suit, sued the Defendants seeking orders that the 1st Defendant is a trespasser on the suit land, payment of mesue profits and vacant possession of the suit land. Secondly, cancellation by the 2nd Defendant of the 1st Defendant's freehold title to the suit land.

Thirdly, general damages and costs of the suit.

His claim is founded on the basis that he is the Administrator of the Estate of one Erasito Mazinga, who was the registered owner of the said suit land.

The instant Application is founded on the claim by the Applicant that the 1st Respondent/Plaintiff is not the rightful Administrator of Estate, having obtained the Letters of Administration to the Estate of the late Erasito Mazinga through fraud, forgery and uttering false documents.

I have looked at the provisions under which this Application is brought.

Order 1 rule 13 CPR allows an interested party to be joined either as a Plaintiff or Defendant to the suit either at the beginning or hearing of the suit.

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My understanding of this provision is that the **interested** party would come to court with an established and clear status establishing that claim of interest to the suit/dispute.

10 The instant application raises issues whose determination in my view are beyond the scope of the application.

Firstly, the applicant claims he is in possession of Letters of Administration granted by this court on 27/10/2009 in Administration Cause 286/2009 for the Estate of Mazinga Kawuta Serwano Mulondo.

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The Letters of Administration granted to the 1st Respondent by the High Court at Nakawa in Administration Cause 8/2012 were in respect of the Estate of Erasito Mazinga.

20 Both the applicant and 1st Respondent contend that the suit land in the head suit was part of the Estate for which each of them obtained Letters of Administration.

The Applicant claims that **Mazinga Kawuta Serwano Mulondo** in respect of whom he has Letters of Administration is the same person as **Erasito Mazinga** for whose Estate Respondent No.1 holds Letters of Administration.

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Both Applicant and Respondent No.1 in their pleadings agree that there is a suit (31/2013) at Nakawa High Court over this same dispute and filed by the Applicant seeking revocation of the Letters of Administration held by Respondent No.1.

30 It is against the above background that I find that this Court cannot go into the merits of determining who should be the rightful holder of the Letters of Administration, when there is a subsisting suit aimed at determining the same issues.

35 This Court is now being asked to determine the dispute pending at Nakawa High Court, through this Application. The position would be different if the Applicant came with an Order or Decree from Nakawa High Court, revoking the Letters of Administration held by the Respondent and confirming him as the right holder/Administrator/owner of the suit land in the instant head suit.

As shown above, this Court cannot tell for certain that the person for whose Estate the Applicant holds Letters of Administration is the same person the Respondent holds Letters for the Estate. The names are clearly different.

5 With the above confusion and the pending case at the High Court at Nakawa, I cannot determine the Applicant's interest in the instant suit to allow him to be added as a Defendant.

Let the applicant pursue the suit at Nakawa to its conclusion, then depending on the outcome, his position, claim and or interest in the current suit will be clearly established.

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I note that Respondents No.2 and 3 did not oppose this Application much as they did not file any replies to the Application.

15 Having so failed to reply, I find that they have nothing to either oppose or concede to as they have no locus in this matter. Their so called not opposing the Application is accordingly of no consequence.

In any case the matter for determination in the instant application is between the applicant and the 1st Respondent.

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I find this application premature and wrongly filed in this Court in view of the subsisting suit at Nakawa.

25 The Application is dismissed with costs to the 1st Respondent. The head suit will proceed as scheduled.

Godfrey Namundi

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Judge

29/11/2013

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29/11/2013:

Sebanja for Applicant

Waluku R. on brief for Muhwezi.

Applicant absent.

Respondent present

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Court: Ruling delivered.

5 **Godfrey Namundi**
Judge
29/11/2013