THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA
AT KAMPALA (LAND DIVISION)
MISCELLANEOUS APPLICATION NO. 4611 OF 2014

(Arising out of Civil Suit No. 33 of 2013)

1. **KALUMBA BENJAMIN SSEBULIBA**
2. **KAYONZO ROBERT :: APPLICANTS**

VERSUS

1. **KAKIRA SUGAR WORKS (1985) LIMITED**
2. **COMMISSIONER LAND REGISTRATION:::::::::::: RESPONDENTS**

BEFORE: HON MR. JUSTICE BASHAIJA K. ANDREW

R U L I N G:

This application is brought by Chamber Summons under *O**rder 6 rr.19; Order 1 rr.10 (2) (3) & 13 Civil Procedure Rules (S.I.71-1);*** and ***Section 98 Civil Procedure Act (Cap. 71)*** for orders that:-

1. ***The Applicant be allowed to amend the plaint by adding the Madhvani Group Ltd as co-defendant.***
2. ***Costs of this application be in the cause***.

The grounds of the application are set out in the affidavit of Kalumba Benjamin Ssebuliba the 1st Applicant. As far as relevant to this application he states as follows;

2. ***THAT I am a joint administrator with the 2nd Applicant/2nd Plaintiff of the estate of the Late Muwanga Omuwesi the registered proprietor of land comprised in Mailo Certificate of Title for Busiro Nakigalala Block 374.35 Acres under F.C 9662. (A copy of the Certificate of Title is attached hereto and marked as annexture "A").***

3. ***THAT in the year 2012 upon carrying out a research at the Land Registry. I discovered that the 1st and 2nd Defendants/Respondents had created "Freehold Title (FRV 2 Folio 23) over our Mailo title and the same was last transferred to the 1st Defendant/1st Respondent. (A copy of the Freehold Title is attached hereto and marked as Annexture "B").***

4. ***THAT the said fraudulent conversion of the title into a free hold was purportedly done by 1st, 2nd Respondents /Defendants who later transferred it to Madhvani Group Ltd which at all material times was aware of the fraud.***

5. ***THAT Madhvani Group Ltd as a Co-Defendant is necessary in order to enable the court effectively and completely adjudicate upon and settle all questions involved in the suit.***

6. ***THAT inclusion of Madhvani Group Ltd as a Co-Defendant is necessary in order to enable the Court effectually and completely adjudicate upon and settle all questions involved in the suit.***

7. ***THAT Madhvani Group Ltd connived with the 1st and 2nd Respondent and causes its self to be registered fraudulently on the suit land.***

8. ***THAT it is just and equitable and in the interests of justice that Madhvani Group Ltd be added as a party.***

The 1st Respondent opposed the application and filed the affidavit of K.P Ewsar, the Director Corporate Affairs of the 1st Respondent Company. He states as follows;

1. ***THAT I am a male adult of sound mind and the Director Corporate Affairs of the 1st Respondent duly authorized to swear this affidavit in that capacity.***

2. ***THAT I have read and clearly understood the contents of the Chamber Summons and the affidavit in support thereof, sworn by BENJAMIN***

KALUMBA SSEBULIBA the 1st Applicant/Plaintiff of the 28th April, 2014 and respond thereto as hereunder.

3. ***THAT I have been advised by the 1st Respondent's Advocate M/S Kampala Associates and I verily believe it to be true and correct that the applicant's application is grossly misconceived, bad in law, frivolous and vexatious an abuse of Court process and brought in bad faith in that;***
   a. ***The intended Amendment in addition to adding a Party will convert the character nature of Plaintiff claim as contained in the existing Plaint and is a departure from the previous Plaint. A copy of the original plaint is attached hereto and marked ANNEXTURE "A".***
   b. ***The intended amendment intends to substitute the existing Cause of action with a new and independent cause of action.***
   c. ***The 1st Respondent in its Written Statement set up a defence inter-alia that the Suit disclosed no cause of action against it, as it was not a registered Proprietor. In the amendment sought the Applicants seek to cure this and negate the said Defence which would be prejudicial to the 1st Respondent.***
4. ***THAT the facts that the Applicants are proposing to introduce in the draft amended Plaint are not new as they were available at the filing the plaint consequently the Applicants have disclosed no sufficient reason to be entitled to an order of amendment.***
5. ***That the suit had been set down for hearing on the 6th of May, 2014 and thus the application for amendment was brought late with a view to delay the hearing and is thus brought in bad faith.***
6. ***THAT the suit land had been set down for hearing on the 6th of May, 2014 and thus the application for amendment of the Plaint vide Miscellaneous Application No. 1009 of 2013 which they subsequently withdrew. The said***

amendment had been similarly brought to delay the hearing of the suit that had been scheduled for the 16th of October, 2013. A copy of the Notice of Motion is attached hereto as ANENXTURE "B".

7. THAT the proposed amendment will prejudice the rights to the application for the amendment of the plaint.

8. THAT I swear this affidavit in opposition and in reply to the application for the amendment of the plaint.

9. THAT whatever I have stated herein is true and correct to the best of my knowledge save the contents of Paragraph 3 which are true and correct based on the advice from sources disclosed therein.

The 2nd Respondent Kayongo Robert filed an affidavit in rejoinder in which he states as follows;

1. THAT I am a male adult Ugandan of sound mind, the 2nd Applicant/2nd Plaintiff in the above matter and I swear this affidavit in that capacity.

2. THAT I have read and understood the contents of the affidavit in reply of K.P. ESWAR sworn on the 13th day of May 2014 and filed herein and I wish to reply thereto as hereunder.

3. THAT in reply to Paragraph 3 of the said affidavit, I maintain that it is only just, equitable and in the interest of justice and also pertinent to add the Madhvani Group Ltd as co-defendant as it will help in the total resolution of all the issues in controversy in the matters before this Honourable Court.

4. THAT in reply to Paragraph 3(a) of the said affidavit, I am advised by my lawyers, M/S Mugisha and Co. Advocates & M/S Twinobusingye Severino & Co. Advocates which information I verily believe to be correct and true that the amendment by addition of a party will not convert the character and the nature of the Plaintiffs' claim as contained in the existing plaint and is not a departure from the previous plaint.

5. ***THAT in reply to Paragraph 3(b) of the said affidavit, I am further advised by our lawyers and verily believe the information to be true and correct that the intended amendment does not substitute the existing cause of action with a new and independent one and I not brought in bad faith.***
6. ***THAT in reply to Paragraph 3(c) of the said affidavit, I aver that the 1st Respondent will not be prejudiced by the amendment and that the amendment will only help to ensure that justice is done in the instant matter.***
7. ***That in reply to Paragraph 4 of the said affidavit, I maintain that the facts are few as stated in our proposed amended plaint.***
8. ***THAT in reply to Paragraph 5 of the said affidavit it is not true that the amendment was brought late nor was it brought in bad faith as the hearing had not yet commenced.***
9. ***THAT in reply to Paragraph 6 of the said affidavit I maintain that the said Misc. Application No. 1009 of 2013 was for the addition of the Attorney General as a party and that the current application is for joining Madhvani Group Ltd as a party and is not intended to delay the trial.***
10. ***THAT in reply to Paragraph 7 of the said affidavit, I aver that the proposed amendment will not prejudice the rights of the Respondents and will instead assist Court to the proper adjudication of the matters in court and will not cause any injustice.***
11. ***THAT I swear this affidavit in support of my application for amendments and will instead assist court to the proper adjudication of the matters in court and will not cause any injustice.***

Submissions:

Counsel for the Applicants, Mr. J.M Mugisha, assisted by Mr. Twinobusingye Saverino, submitted that there is need to amend the plaint to include Madhvani

Group Ltd. as a co-defendant, that when the Applicants conducted a search in the Lands Registry in 2012, they discovered that 1st and 2nd Respondents had fraudulently created a freehold title which they transferred to the 1st Respondent and subsequently to Madhvani Group Ltd. the current registered proprietor, which was aware of the fraud. Counsel submitted that the inclusion of Madhvani Group Ltd. as co-defendant would be necessary in order to enable the court to effectually and completely adjudicate upon and settle all the questions in the suit.

Counsel further submitted that that the amendment sought will not convert the character and nature of the Plaintiff's claim as it is in the existing plaint, and is not a departure from the previous plaint as claimed by the 1st Respondent. Mr. J.M. Mugisha maintained that the intended amendment does not seek to substitute the existing cause of action with a new and independent one, and nor is the Application brought in bad faith as claimed by Counsel for the 1st Respondent. Mr. J.M. Mugisha cited the case of ***Eastern Bakery v. Castelino [1958] EA 461,*** to the effect that amendments to pleadings are allowed by courts so that the real questions in controversy between eh parties are determined and substantive justice is administered without undue regard to technicalities.

Regarding the cause of action, Mr. J. M. Mugisha cited the case of ***Motokov v.Auto Garage Ltd. & Others (No. 2) [1971] EA 353***; and ***Mulowooza & Brothers Ltd v. N. Shah & Co. Ltd S.C.C.A No. 26 of 2010.*** In both cases it was held that an amendment adding a new cause of action can be allowed. Also in the latter case, the Supreme Court held that the rules of procedure do not necessarily bar introducing new causes of action in an amendment, but that what is prohibited is amending a plaint to substitute a distinct new cause of action for another. Counsel also cited ***Mohan Musisi Kiwanuka v. Aisha Chand, S.C.C.A No. 14 of 2002*** where it was held that what is prohibited is an amendment that will be prejudicial

to the other party, but that even then if the prejudice can be sufficiently compensated to by costs, the amendment will be ready allowed.

Regarding the joinder of a party, Mr. Mugisha relied on the case of ***Baku Raphael Obudura & Another v. AgardiDidi & Others, Constitutional Petition No. 04 & 06 of 2002; and Dr. James Rwanyarare & A'nor, Constitutional Appeal No.01 of 1999.*** Counsel submitted that the cases illustrate the import of ***Order1 r.10 (2) CPR*** that court is vested with wide discretion to add parties at any stage of the proceedings either upon or without the application of either party on such terms as may be just. Counsel pointed out that the test to be applied before doing so is whether it will enable the court to effectually and completely adjudicate upon and settle all questions involved in the matter.

Mr. J.M.Mugisha maintained that adding Madhvani Group Ltd. as a co-defendant because it is a necessary party, and is crucial as it is the current registered proprietor with legal interest in the suit land, and the case cannot be fairly dealt without its inclusion as a party. Mr. Twinobusingye Saverino associated himself with the foregone submissions.

Mr. Paul Kuteesa, Counsel for the 1st Respondent, opposed the application. He submitted that whereas all the authorities cited by Counsel for the Applicants relate to amendment of the plaint, the Applicants actually only seek to add a party - Madhvani Group Ltd; whom Mr. Kuteesa happens not to represent. That in effect, the submissions by Counsel for the Applicants are a departure from what the application seeks, hence that the prayer should be rejected because it seeks something totally different from the application.

Mr. Paul Kuteesa also, faulted the Applicants for seeking; not only to amend to add a party, but also the main body of the plaint. Counsel advanced the view that an application to add a party cannot at the same time be taken to mean that Applicants can amend the plaint as regards other parties.

Also relying on ***Mulowooza & Brothers Ltd v. N. Shah & Co. Ltd (supra); and Eastern Bakery v. Castelino (supra),*** Mr. Kuteesa submitted the principles enunciated in the cases are that an amendment of pleadings will not be allowed where it intended to substitute one cause of action for another, or change the nature and or character of the subject matter of the suit. Further, that the application to amend pleadings will not be allowed where it will prejudice the respondent by causing injustice, and that the application must be brought without *mala fides.*

Counsel strongly maintained that the proposed amendment will be prejudicial to the 1st Respondent whose written statement of defence to the original plaint raises a defence that the suit does not disclose a cause of action against it principally because it is not the registered proprietor of the suit land, and that the proposed amendment is intended to circumvent this defence by joining Madhvani Group Ltd. the current registered proprietor, and making averments of a purported fraudulent dealing between the 1st Respondent and the Madhvani Group Ltd. Counsel argued that such proposed amendment which seeks to take away the 1st Respondent's defence is prejudicial, and not permissible.

Mr. Kuteesa also submitted that the proposed amendment has the intention of the Applicants changing the subject matter of the suit and turning the suit substantially of a different character. That the Applicants intend to introduce a claim that the transfer of the suit land to 3rd Defendant was fraudulent, null and void; a fact that was not previously pleaded. Also that the Applicants seek an order that the Registrar of Titles rectifies the registered to restore the late Muwanga Omuwesi as the lawful registered proprietor; which was not previously canvassed. Similarly, that the intended amendment seeks an order of temporary injunction to restrain the Defendants from evicting the Plaintiffs from the suit land and or any other way interfering with their possession, yet the Applicants in the previous plaint sought

eviction orders against the Defendants. That this means they are now claiming to be in possession which was not the position in the original plaint.

Mr. Kuteesa also relied on the case of ***Abdu Karim Khan v Muhammed Roshan [1965] EA 289*** where it was held that an application for amendment should only be allowed if there are *bonafide* reasons for such an application. Counsel argued that no such reasons have been advanced why the intended amendments were never included in the plaint in the first place. That the 1st Applicant states that he conducted a search in the Lands Registry in 2012 and discovered that the 1st and 2nd Defendants/Respondents had created a freehold title ***FRV 2 Folio 23*** out of the Plaintiffs *mailo* title and transferred the same to the 1st Defendant who subsequently transferred the same to Madhvani Group Ltd. the current registered proprietor was registered on 02/07/2012. Counsel argued that this knowledge of Madhvani Group Ltd being the registered owner was well within possession of the Applicants as of 2012, and as such there is no basis for the Applicants to claim they did not include Madhvani Group Ltd. because they did not have the information when they instituted the suit on 31/01/2013.

Mr. Kuteesa also argued the application is *mala fides* because the suit has been set down for hearing a number of times and that each time the Applicants come up with numerous applications seeking to add parties. Counsel cited one such application ***HTC-MA-1009-2013*** which the Applicants filed seeking to add the Attorney General as party but withdrew it shortly after. Counsel argued that the numerous applications are only intended to frustrate and delay the hearing of the main suit.

Mr. Kuteesa also sought to distinguish the decision in ***Mulowooza Brothers Ltd v. N. Shah & Co. Ltd (supra)*** from the facts of this case because the decision in that case states that principles in ***Eastern Bakery Ltd v. Castelino (supra)*** have to be followed; and that by following those principles this application ought not to be

allowed. Counsel argued that the ***Mulowooza Brothers Ltd v. N. Shah & Co. Ltd case (supra)*** allowed the amendment primarily because the appellant; the party opposing the amendment, had not demonstrated that the respondent's proposed amendment intended to substitute the cause of action for a different one, or that it would cause injustice to him. Counsel maintained that in the instant application the 1st Respondent has demonstrated the above requirements.

In rejoinder Mr. J.M. Mugisha submitted that this is an omnibus application where the application for amendment to add a party would automatically lead to an amendment of the plaint, and that the orders sought would be consequential upon the amendment; which is in the spirit of avoiding multiplicity of suits. Counsel argued that similar arguments, such as advanced by Mr. Kuteesa, that the amendment would change the character of plaint from the original one were raised in the ***Mulowooza & Brothers Ltd. case (supra)***, but that the arguments were dismissed. Also, that the same arguments that respondent would not rely on the defence (of limitation) which would be defeated because of the proposed amendment was dismissed. Counsel maintained that the 1st Respondent has failed to demonstrate the change in character of the case or substitution of the cause of action for a new one.

Mr. J. M. Mugisha also argued that while ***Eastern Bakery v. Castelino case (supra)*** is good law, the 1st Respondent has failed to demonstrate any *mala fides* on part of the Applicants. Counsel also maintained that the 1st Respondent has not shown how it will suffer any prejudice if Madhvani Group Ltd. is brought on board, and that the 1st Respondent does not dispute the nexus between itself and Madhvani Group Ltd. regarding succession in title.

Mr. J.M. Mugisha also sought to distinguish the ***Abdu Karim Khan v. Muhammed case (supra)***, arguing that it is not a legal requirement for a party to have exercised

due diligence and that information should not have been in its possession. That this would be a requirement in an application for review and not for amendments.

Resolution:

I will start with Mr. Paul Kuteesa's criticism that the application seeks leave to add a party, but that the submissions in support thereof relate to amendment of the plaint, and that what the Applicants seek in the application is different from what their Counsel prayed for in the submissions.

The application is brought under ***Order 6 r.9 CPR,*** which is a provision of general application governing applications for amendment of pleadings, and also under ***Order 1 rr.10 (2) (b) & 13 CPR,*** which are provisions specific to the adding or striking out a party to pleadings either on application of either party or on courts own motion on such terms as may appear to the court to be just. The wide and extensive power of amendment vested in court under the provisions are designed to curtail the failure of justice arising from procedural errors, mistakes or defects and serve the ends of substantive justice. This is in line with the spirit and letter of ***Article 126(2) (e) of the Constitution*** that substantive justice shall be administered without undue regard to technicalities.

There is also need to shed more light on what is meant by "amendment". The term "amend" is defined under ***Blacks Law Dictionary (8th Ed) page 89,*** to mean;

> ***"To make right; to correct or rectify…. To fix a clerical error…To change the wording of;... to formally alter...by striking out, inserting, or substituting words…"***

At page 1191 (supra) "Amended pleading" is defined as;

> ***"A pleading that replaces an earlier pleading and that contains matters omitted from or not known at the time of earlier pleading."***

The authors go on to elucidate as follows;

"An amendment is a correction of an error or the supplementing of an omission in the process of pleadings. An amended pleading differs from supplementary pleadings in that the true function of the latter is to spread upon the record matter material to the issue which has arisen subsequent to the filing of the pleadings, while matter of the amendment purely is matter that night have been pleaded at the time the pleadings sought to be amended was filed, but which through error or inadvertence was omitted or misstated. It has been declared that allowance of amendments is incidental to the exercise of all judicial power and indispensable to the end of justice."

From the above authoritative extract and definitions, it is clear to me that to amend pleadings as in the instant case would include, but not limited, to adding or striking out a party, and where the amendment seeks to add or strike out a party to the pleadings such pleadings are considered as amended thereby. Therefore, it is perfectly in order for an application for amendment to seek to add a party to the pleadings and in the same course of adding the party the pleadings are amended. As such there would be no necessity to file two applications, one for adding a party and the other for amending pleadings because one automatically leads to and/or is consequent upon the other.

My findings above are buttressed by the case of ***Mugemu Enterprises v. Uganda Breweries Ltd, C.S No. 462 of 1991(unreported)*** to the effect that an omni-bus application of this nature is possible where the applications are of the same nature and one supersedes the other, and it is for expeditious disposal of matters and for avoidance of multiplicity of suits. To that end, I concur with submissions of Mr. M.Mugisha that there was no necessity for filing two separate applications and that one automatically leads to the other.

Regarding the law upon which amendment of pleadings ought to be made, the Supreme Court laid down the governing principles in ***Gaso Transporter Services Ltd. v. Martin Adala Obene, S.C.C.A. No.04 of 1994.*** Firstly, the court is vested with vide discretion to allow amendments to pleadings at any stage of the proceedings on such terms as may be just, and such amendments shall be made as may be necessary for the purpose of determining the real question in controversy between the parties, and to avoid multiplicity of proceedings. See also: ***Order 6 r.19 CPR.***

Secondly, a party generally encounters little or no difficulty obtaining leave to amend its pleadings, but the application should not be left to a stage so late in the proceedings that to allow an amendment then would prejudice the application by occasioning injustice to the opposite party. See: ***Eastern Bakery v. Cateslino (Supra); General Manager E.A R & H v. Theirstein [1968] EA 354.*** It is also the settled that the prejudice is not considered as occasioning injustice to the opposite party if it is of such a nature that it can be atoned for with costs. See: ***Mohan Musisi Kiwanuka v. Asha Claud, S.C.C.A No. 14 of 2002; Wamanyi v. Interfreight Forwarders (U) Ltd [1990] II KALR 67.*** The onus of proving that the prejudice occasioned by the amendment cannot be atoned for in costs then shifts to the party seeking to block the amendment.

Thirdly, the application which is brought *malafides* should not be granted. See: ***Abdu Karim Khan v Muhammed Roshan (supra).*** The fourth principle, though not relevant to facts of the instant case, is that no application should be allowed where it expressly or impliedly prohibited by any law in force.

The rationale for the principles above appears to have been set earlier on in time in the case of ***Copper v. Smith [1884] 26 CHD 700;*** and from the recently decided cases it is still good law. Bowen L.J. observed that;

"I think is well established principle that the object of courts is to decide the rights of the parties, and not to punish them for mistakes they make in the conduct of their cases by deciding otherwise then in accordance with their sights…. I know of no kind of error or mistake which, if not fraudulent or intended to outreach, the court ought to correct, if it can be done without injustice to the other party – courts do not exist for the sake of discipline, but for the sake of deciding matters in controversy."

I wish to note that the observations by Bowen L.J above were made in respect applications for amendments to pleadings, and would apply with equal force to the instant application.

In the instant case, Mr. Paul Kuteesa argued that the 1st Respondent would be prejudiced because it had set up a defence that the plaint discloses no cause of action against the 1st Respondent/Defendant, but that the in proposed amendment to add Madhvani Group Ltd. it would whittle away the said defence, in addition to introducing a new cause of action as well as substituting the cause of action in the original plaint for another. Mr. J.M Mugisha countered arguing that there is no new cause of action introduced by the intended amendment let alone substituting one cause of action for the other. He maintained that the 1st Respondent failed to demonstrate how its defence that the plaint discloses no cause of action against it would no longer be available, or whether costs could not atone for such a prejudice, if at all.

In my view, the starting point is to determine whether court can allow a party to amend its pleadings where such amendment would introduce a new cause of action. The established law, as was stated in ***Mulowooza & Brothers Ltd (case) (Supra); Eastern Bakery v. Castelino (Supra***) is that court will not refuse to allow an amendment simply because it introduces a new case, but that there is no power to enable one distinct cause of action to be substituted for another. Further, the

court will refuse leave to amend where the amendment would change the action into one of a substantially different character or where it would prejudice the rights of the opposite party existing at the date of the proposed amendment.

The 1st Respondent did not show demonstrate how the above principle applied to its case. Mr. Kuteesa submitted that the proposed amendment seeks to substitute the original cause of action with another one. I respectfully disagree because the cause of action in the original plaint was founded on *fraud* and this has not changed or been substituted for another in the proposed amendment. As Mr. J.M Mugisha argued, and rightly so in my view, the proposed amendment and original plaint concern the "*fraudulent transfer*" of the suit land from the 2nd to the 1st Respondent and subsequently to the 3rd Respondent now sought to be added as party to the main suit. I quite agree that the cause of action is the same, and that it does not alter or change the nature or character of the case the 1st Respondent is to meet.

If indeed there existed no cause of action against the 1st Respondent in the original plaint, as argued by Mr. Kuteesa Paul, I do not see how such a defence would cease to be available to, or deprived of the 1st Respondent merely by the addition of a party. I believe that all that the 1st Respondent needed to show is how it would be prejudiced by the proposed amendment, and that such a prejudice cannot be remedied by the award of costs. The 1st Respondent however failed in its duty to demonstrate this, and court would find that the proposed amendment is not prejudicial to the 1st Respondent.

The other issue raised by Mr. Kuteesa is that the application for amendment of pleadings is *malafides*. Counsel premised this argument on fact that the main suit had been previously, on a number of occasions, set down for hearing, but had been frustrated by the Applicants each time by the filing of numerous applications seeking to add parties, thus delaying the hearing of the case. Counsel cited the

example of ***Miscellaneous Application No. 1009/2013*** where the Applicants sought to add the Attorney General but then withdrew the application.

In reply Mr. J.M Mugisha submitted that it is in the interest of the Applicants to advance the hearing to their case and cannot frustrate their own hearing. Counsel pointed out they are a new set of lawyers in the suit, and not associated with the cited previous application, which was lodged by their predecessors and was, in any case, in respect of a different party from the one now sought to be added

I entirely agree that a number of applications were in the past filed by the Applicants seeking to add parties, and one such application was indeed withdrawn. I cannot however read *malafides* in the current application merely because of existence of previous applications. Each case has to be gauged on its facts. Besides, the previous application cited did not involve the party now sought to be added as co-defendant. I also agree with Mr. J.M. Mugisha that the current new lawyers are not in any way associated with the previous applications. *"Mala fides" s*imply denotes the dishonesty of belief or purpose, which if pursued in an application would render it untenable because the applicants have no clean hands. I have not found the instant application to add party on ground that its presence is necessary for the effectual and complete settlement of all questions involved in the suit to belong to fall in the *genre* of such *malafides*.

For as long as the applicant can demonstrate that the order sought would legally affect its interest or of the party sought to be added by the amendment, and that it is desirable to have that party joined to avoid multiplicity of suit, the numerous previous applications would not matter. In my view this position properly complies with provisions of ***Order1 rr.10 (2) (b) and 13 (supra)*** in as much as it achieves the purpose and effect of ***Section 33 of the Judicature Act (Cap.13)*** which enjoins courts as far as possible to determine all matters in controversy as between the parties completely and finally and to avoid all multiplicity of legal proceedings

covering any of the matters. See also: ***Mukuye Steven & 73 Ors v.Madhvani Group Ltd., H.C. Misc. Appl. No. 0821 of 2012 (unreported).***

The Applicants have annexed to their application a copy of a certificate of title showing that Madhvani Group Ltd. is the current proprietor of the suit land and that the 1st Respondent is one of the predecessors in title to Madhvani Group Ltd. This fact has not been denied. It is therefore be necessary for court to investigate the nexus between the 1st Respondent and the party sought to be added in respect of the certificate of title so as to completely and finally determine the allegations of fraud by the Applicants herein; which necessarily calls for the joinder of Madhvani Group Ltd as a party to the suit.

Mr. Kuteesa Paul raised a point that the Applicants aver in their pleadings that they conducted a search in Lands Office in 2012 and that if at all they did, they would have invariably found that Madhvani Group Ltd. was the current registered proprietor and included it as party in the pleadings. That this knowledge was in their possession but they choose not include Madhvani Group Ltd. which they seek to add now and that this should be counted against the Applicants and the application disallowed. To back this, he relied on ***Abdul Karim Khan v. Muhammad Roshan [1965] EA 289.***

Relying again on ***Mulowooza & Brothers case (supra)*** J.M. Mugisha for his part submitted that it is not a legal requirement that a party should have exercised due diligence and that information should not have been in its possession. That such is a requirement for applications for review but not for amendment of pleadings.

Let me emphasize that the same principle applies that an application for amendment of pleadings, however negligent, or careless may have been the first omission, and however late the proposed amendment, should be readily allowed if it can be made without injustice to the opposite party. See: ***Nsereko v. Taibu Lubega [1982] HCB 51.*** I have already found that no injustice would be

occasioned to the 1st Respondent in the instant application. Therefore, the fact that it was in the knowledge of the Applicants that Madhvani Group Ltd. is current registered proprietor to the suit land, and the Applicants never included it in their original plaint is no bar to the application to seek leave to include it as party to the pleadings. The principles enunciated in ***Mulowooza & Brother's case (Supra)*** to as to amendment of pleadings do not shift depending on when a party learns of the facts that would constitute the amendment sought to be introduced in subsequent pleading.

On the whole the Applicants have satisfied and complied with the legal requirements for the amendment of pleadings; and the application is accordingly allowed. The applicants are directed to file and serve the amended pleadings onto the opposite parties within 7 days from the date of this ruling. Costs of the Application will be in the cause.

BASHAIJA K. ANDREW
JUDGE
27/05/14

Mr. J.M.Mugisha – Counsel for the Applicants present.

Mr. Paul Kuteesa – Counsel for the 1st Respondent present.

Applicants – present.

Ms. Justine Namusoke - Court Clerk present.

Ms. H. Nanseera – transcriber present.

Ruling read in open court.

BASHAIJA K. ANDREW
JUDGE
27/05/14