

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
[LAND DIVISION]**

MISC. APPLICATION NO. 207 OF 2018

JAMES KAJUMBA:.....APPLICANT

VERSUS

- 1. ANDREW MUKIIBI**
- 2. ISMAIL SENTAMU**
- 3. KAVUMA HONEST**
- 4. PATRICIA KYAMBADDE:.....RESPONDENTS**

BEFORE HOM. MR. JUSTICE HENRY I. KAWESA

RULING

This application for leave to allow the Applicant amend Civil Suit No. 156/2015 to add the Respondents as Defendants to the main suit in the manner proposed in the attached amended plaint.

The application is supported by the affidavit of Laban Kimuli. As a matter of preliminaries, the application refers to an attached proposed amended plaint, which is in fact not attached.

It is trite law that the parties are bound by their pleadings. I did not see the said attached proposed amended plaint, which means the pleadings are incompetent.

I am aware that O.1 r 10 (2) of the Civil Procedure Rules which empowers this Court to allow the name of any person who ought to have been joined or whose presence before Court to be added.

In this vain, I am inclined to fault the Applicants for the failure to attach the copy of the proposed amended plaint. However, since the 1st Defendant replied and even addressed

MISC. APPLICATION NO. 207-2018 JAMES KAJUMBA VS ANDREW MUKIIBI & 2 OTHERS (RULING)

Court on this Application, I will blink over the said omission as it did not prejudice the Respondents.

Going to the merits of the application, I find that all the submissions and pleadings herein considered O.1 R 10(2) of the Civil Procedure Rules, empowers this Court to consider this application with one consideration in mind thus *‘a party whose presence before Court, may be necessary in order to enable the Court effectively and completely to adjudicate upon and settle all questions involved in the suit; be added.*

From the above legal consideration, this Court agrees with the applicant that adding the proposed Defendants to this suit is necessary for aiding this Court to effectively and completely adjudicate and settle all questions involved in this suit.

This is because in their application vide the affidavit of Laban Kimuli (paragraph 3, 4, 5, and 6, new information bringing the Defendants into issue regarding this land has been discovered.

I have read the affidavit in reply by Andrew Mukiibi in paragraphs 3, 4 and 5 that indeed he bought land comprised in Kyadondo Block 257 plot 985 and he claims to be a bonafide purchaser thereof. I do note however from the affidavit in rejoinder by Laban Kimuli in paragraph 3 thereof and 4, 5, 6 and 7, that he intends to put all the issues raised by Mr. Mukiibi before Court for resolution as part of the main trail.

In the case of ***Bahemuka versus Anywar & Anor & Anor (1987) HCB 71***, Court noted that the Plaintiff is empowered to sue anybody he thinks he has a claim against. The decision to sue is for the Plaintiff; as to whether there is a cause of action, is a question to be determined after the pleadings are completely filed. I appreciate the decision of the Court in ***Oketcho Joy versus Okumu & 4 Ors; Civil Suit No. 539/2006***, (quoted by the Defendant’s Counsel.)

However, the decision considered as substantive point of law during trial, which went to the root of the case unlike in this case. Therefore this case is distinguishable from the current application.

**MISC. APPLICATION NO. 207-2018 JAMES KAJUMBA VS ANDREW MUKIIBI & 2 OTHERS
(RULING)**

The Respondents raised a number of defences and argued that this application ought to fail. I did not find the reasons advanced; sufficient to disentitle the Plaintiff the right to add parties to the suit as prayed.

For reasons above, I find that this application is proved, and it is therefore granted.

Costs be in the cause.

Regarding the title of George D. Mus

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Henry I. Kawesa

JUDGE

9/4/2018

**MISC. APPLICATION NO. 207-2018 JAMES KAJUMBA VS ANDREW MUKIIBI & 2 OTHERS
(RULING)**

12/4/2018

Baingana John Paul for Applicant

Applicant Attorney present.

Opio Moses for the 1st Respondent absent

2nd and 3rd Respondent absent.

Court: Ruling communicated.

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Henry I. Kawesa

JUDGE

13/4/2018