

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(LAND DIVISION)
MISCELLANEOUS APPLICATION NO.125 OF 2020
(Arising from Civil Suit No.265 of 2017)

MUHAMMED BUWULE KASASA.....APPLICANT

VERSUS

1. RUTUNGU INVESTMENTS
2. SERACEN (U) LIMITED
3. MUGUME STEVENS
4. ERIS BEMANYISA T/A BAGEMA

AUCTIONEERS & COURT BAILIFFS.....RESPONDENTS

Before: Justice Alexandra Nkonge Rugadya.

RULING:

Introduction:

This application is brought by chamber summons under **Section 98 of the Civil Procedure Act Cap.71 and Order 6 rule 19 & 31 of the Civil Procedure Rules SI 71-1** seeking orders that the plaintiff/applicant be granted leave to amend the plaint in **Civil Suit No.265 of 2017** by adding **MARTIN MUGAAJU** as a party and the costs of the application be provided for.

Grounds of the application:

The grounds upon which this application is premised are contained in the affidavit in support of **Mr. Muhammad Buwule Kasasa** the applicant, wherein he states *inter alia* while he filed **Civil Suit No.265 of 2017** for recovery of the suit land and the other respondents for having participated in the fraudulent acquisition of the suit land, the 1st respondent filed a defence claiming to have bought the land from the applicant but did not disclose to court that he had transferred the suit land to a one Martin Mugaaaju, while the rest of the respondents denied the allegations set out against them.

That before filing the head suit and unknown to the applicant, the 1st respondent transferred the suit land into the names of Martin Mugaaaju, the current registered proprietor of the suit land who although is not a party to the suit, is a necessary party to the suit to enable court effectually determine the dispute, and avoid multiplicity of proceedings.

Representation:

The applicant was represented by **M/s S.K Kiiza & Co. Advocates**. Counsel for the applicant filed their written submissions as directed by court. Despite having being duly served, the respondents did not file any reply implying that they did object to this application.

Consideration of the application.

I have carefully read the pleadings, evidence and submissions of counsel, the details of which are on court record and which I have taken into consideration in determining whether or not the instant application merits the prayers sought.

The Law.

Order 6 rule 19 of the Civil Procedure Rules, Statutory Instrument no. 71-1 provided that:-

"The court may, at any stage of the proceedings, allow either party to alter or amend his or her pleadings in such a manner and on such terms as may be just and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties."

Under **Order 1 rule 3 of the Civil Procedure Rules S.I 71-1** all persons may be joined as defendants against whom any right to relief arising out of the same act or transaction is alleged to exist.

For a party to be joined on ground that his presence is necessary for the effective and complete settlement of all questions involved in the suit, it is necessary to show that the orders sought would legally affect the interest of that person and that it is desirable to have that person joined to avoid multiplicity of suits. (***Departed Asians Property Custodian Board v. Jaffer Brothers Ltd [1999] I.E.A 55; See also: Gokaldas Laximidas Tanna v. Store Rose Muginza, H.C.C.S No. 7076 of 1987 [1990 - 1991] KALR 21.***)

The purpose of joinder of parties is therefore to avoid multiplicity of suits. Under **Section 33 of the Judicature Act (Cap. 13)** court has powers to grant remedies so that as far as possible all matters in controversy between the parties are completely and finally determined and all multiplicities of legal proceedings concerning any of the matters avoided.

In the case before this court, the applicant seeks that Mr. Martin Mugaaju be added as a defendant because he is the registered proprietor of the suit land after the same had been transferred to him by the 1st respondent before the main suit was filed. That the said Martin Mugaaju was a necessary party to the suit that will enable court effectually determine and avoid multiplicity of proceedings.

According to the case of **Samwiri Mussa versus Rose Achen (1978) HCB, 297 Ntabgoba Ag. J**, (as he then was) held that;

'Where facts are sworn to in an affidavit and they are not denied or rebutted by the opposite party, the presumption is that such facts are accepted'.

The above case still represents the correct position of the law, and has been followed up to date and I find no reason for deviating from the same. It is not in dispute that Mr. Martin Mugaaju was the registered proprietor of the suit land, as per the transfer instruments attached to the applicant's affidavit in support of the application for the land comprised in **Kibuga Block 10 plot 115 land at Namirembe.**

According to the proposed amended plaint attached to the affidavit in support, the applicant seeks among others a declaration that the intended 5th defendant to wit, Martin Mugaaju, fraudulently

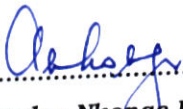
acquired the suit land as well as an order that his registration be cancelled and the plaintiff be reinstated on the certificate of title.


5 In the circumstances, it would be appropriate and in the interest of justice that all matters touching the subject matter of the suit land be determined finally and completely under the main suit, to avoid litigating over the same matters again.

This application is hereby granted. No orders as to costs.

I so order.

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Alexandra Nkonge Rugadya
Judge
9th August, 2022

Delivered by email

5.
9/9/2022