
UGANDA / JUDGMENT

Democratic Governance Facility (Suing through the Royal Danish Embassy) v Centre for Constitutional Governance & 2 Others (Miscellaneous Application 970 of 2023) [2025] UGCommC 7 (20 January 2025) [2025] UGCommC 7

COURT

Commercial Court of Uganda

BEFORE

Anna B. Mugenyi, J

CASE / FILE NUMBER

Miscellaneous Application 970 of 2023

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF KAMPALA AT KAMPALA

[COMMERCIAL DIVISION]

MISCELLANEOUS APPLICATION NO. 0970 OF 2023

[ARISING OUT OF CIVIL SUIT NO. 0953 OF 2020]

DEMOCRATIC GOVERNANCE FACILITY

(SUING THROUGH THE ROYAL DANISH EMBASSY):.....APPLICANT

VERSUS

1. CENTRE FOR CONSTITUTIONAL GOVERNANCE

2. RABWONI OKWIRI

3. KAKWANZI HELLEN:.....

BEFORE: HON. LADY JUSTICE ANNA B. MUGENYI

RULING

This application was brought by notice of motion under Section 98 of the Civil Procedure Act (CPA), Order 1 rule 13 and Order 50 rules 1 & 3 of the Civil Procedure Rules(CPR) for orders that:

- 1. The Kingdom of Denmark substitutes the Democratic Governance Facility as the plaintiff in Civil Suit No. 0953 of 2020.
- 2. The costs of this application be in the cause.

This application was supported by the affidavit of Anders Haue Korsbak, the First Secretary at the Royal Danish Embassy and opposed by the affidavit in reply of Dr Bireete Sarah, the Executive Director of the 1st respondent.

The brief background of this application is that the applicant filed Civil Suit No. 0953 of 2020 against the respondents on the 16th of November 2020 for recovery of funds and assets the respondents had received from them and had failed to account for. The main suit was initially filed by Democratic Governance Facility (DGF) suing through the Royal Danish Embassy but the Embassy was struck out following a preliminary objection raised by the respondents. On the 30th of June 2023 the mandate of the applicant to operate in Uganda ceased.

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The applicant contends that the Royal Danish Embassy in Kampala has at all times being legally responsible for the DGF on behalf of the development partners; and that following the cessation of the DGF operations, the development partners authorised the Kingdom of Denmark acting through the Royal Danish Embassy to take over authority and responsibility for all matters relating to the DGF which had not been resolved by the 30th of June 2023 through an addendum to the memorandum of understanding.

REPRESENTATION

The applicant was represented by M/s S & L Advocates whereas the respondents were represented by M/s J Byamukama & Co Advocates.

RULING

I have read the pleadings of the parties in this matter and I have also considered the submissions of both counsel. The main issue for consideration is whether the Kingdom of Denmark should substitute the Democratic Governance Facility (DGF) as the plaintiff in Civil Suit No. 0953 of 2020.

Order 1 rule 13 of the CPR provides that:

"Any application to add or strike out or substitute a plaintiff or defendant may be made to the court at any time before trial by motion or summons or at the trial of the suit in a summary manner".

This Order provides for the substitution of a plaintiff at any time before the trial of a suit. Courts have overtime allowed the substitution of parties to the suit where such substitution will not prejudice the other party and it will enable the resolution of the main issues in dispute.

In the instant case, it is not in dispute that the applicant (DGF) filed this suit before it ceased its operations in Uganda and it is also not in dispute that the applicant has since ceased its operations in Uganda.

Annexure C of the applicant's affidavit in support contains an addendum to the memorandum of understanding signed by the development partners that formed DGF and under paragraph 8 it provides that:

"The development partners now agree that all matters relating to the DGF which have not been finally resolved or concluded upon the expiry of the administrative closing down period on 30th June 2023 shall be under the authority and

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responsibility of the Kingdom of Netherlands acting through the Royal Danish Embassy in Kampala until they are conclusively resolved".

Further under paragraph 9 of the said addendum to the memorandum of understanding, it is provided that:

"Under this addendum to the memorandum of understanding, the Kingdom of Denmark is authorized to take over on behalf of the signatories of the memorandum of understanding, all court cases which were filed for and on behalf of the DGF and are still pending before the courts of law".

The addendum to the memorandum of understanding expressly authorizes the Kingdom of Denmark to take over all court proceedings on behalf of the DGF.

The major contention against granting this application by the 1st respondent is that the Royal Danish embassy which the Kingdom of Denmark intends to sue through enjoys diplomatic immunity and in the addendum to the memorandum of understanding the applicant seeks to rely on, they still maintain that they will not lose their diplomatic immunity.

Furthermore, the 1st respondent contends that under Article 31(2) of the Diplomatic Privileges Act, a diplomatic agent is not obligated to give evidence as a witness. Counsel contended that failure to access a witness from the applicant due to diplomatic immunity will greatly prejudice the first respondent's right to a fair hearing.

Counsel for the applicant submitted that the 1st respondent will not be prejudiced since they have a right in law to file a counterclaim against the Kingdom of Denmark on account of the waiver of their immunity on account of being substituted as the plaintiff. Counsel further contended that, it is illogical that a plaintiff will fail to produce their witness on account of diplomatic immunity yet the burden of proof lies on them.

In the case of DGF v Uganda Youth Network & Others HCCS No. 0954 of 2020 Justice Mubiru dealt with the issue of diplomatic immunity and stated that:

"Waiver thus does not alter the status of the diplomatic immunity; it is a voluntary relinquishment of a known right".

Further while relying on Article 32(3) of the Diplomatic Privileges Act and the Vienna Convention on diplomatic relations, the Honorable Judge stated that:

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"Under that provision, the diplomat's voluntary initiation of a suit serves as a waiver by implication with reference to any directly related claims that may be **brought by the party opponents**. It follows that participation in litigation by a foreign state without an affirmative assertion of immunity constitutes an implied waiver. An embassy is simply a representation of another country in Uganda and has no existence independent of the state it represents. It seems to follow from this premise that if the sovereign has waived immunity with respect to certain proceedings, that the agent's derivative immunity is consequently waived as well."

He further stated that:

"It is also within the discretion of a trial court to determine that the conduct of a litigant is of such a character as to qualify as a waiver that cannot be withdrawn for the purpose of the specific proceedings. The Royal Danish Embassy is an agent of the Kingdom of Denmark. It follows therefore that through her agent in Uganda, by voluntary initiation of this suit had the embassy had capacity to sue, the Kingdom of Denmark would have waived her sovereign immunity."

I, therefore, agree that once a diplomatic agent enjoying immunity initiates proceedings, then they are precluded from invoking the same from any counterclaim directly connected to the principal claim. (see the Diplomatic Privileges Act). The ¹ respondent in this case can file a counterclaim connected to the principal claim and the agent enjoying immunity will be precluded from invoking immunity.

Order 1 Rule 13 of the CPR allows the substitution of parties where it is just and will not prejudice the opposite party in a suit. I therefore find that the substitution of DGF which has since ceased its operations in Uganda with the Kingdom of Denmark is in the interest of justice and will not in any way prejudice the ¹ respondent.

I therefore grant this application with the following orders:

- 1. Leave is granted to substitute the Kingdom of Denmark as the plaintiff in Civil Suit No. 0953 of 2020
- 2. The costs shall be in the cause.

Dm Btatan

HON. LADY JUSTICE ANNA B. MUGENYI DATED.....

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Prepared on 14 October 2026 · Esheria