

UGANDA / JUDGMENT

Democratic Governance Facility v Sebei
Diocese Community Development & 4
Others (Miscellaneous Application 973 of
2023) [2024] UGCommC 50 (4 January 2024)
[2024] UGCommC 50

COURT

Commercial Court of Uganda

BEFORE

Ocaya, J

CASE / FILE NUMBER

Miscellaneous Application 973 of 2023

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5 THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA

[COMMERCIAL DIVISION]

MISCELLANEOUS APPLICATION NO. 973 OF 2023

[ARISING FROM CIVIL SUIT NO. 956 OF 2023]

DEMOCRATIC GOVERNANCE FACILITY] APPLICANT

VERSUS

| 15 | 1.
SEBEI DIOCESE COMMUNITY DEVELOPMENT |] | |

| ---|-----|---|-----|

| | AND EMPOWERMENT (SD-CODE) |] | |

| | 2.
REV. ALIWA JULIUS SIYA |] | RESPONDENTS |

| | 3.
CHELENGAT LUCAS |] | |

| | 4.
CHEPEOK ANDREW |] | |

| 20 | 5.
WABWIRE GODFREY |] | |

Before: Hon Justice Ocaya Thomas O. R

RULING

25

Background

The Applicant brought this application for the following reliefs:

- (a) The Kingdom of Denmark substitutes the Democratic Governance Facility ["DGF"] as the Plaintiff in High Court Suit No. 956 of 2020.
- 30 (b) The costs of this application be in the cause.

The Application is premised on Section 98 of Civil Procedure Act, Orders 1 Rule 13 and 50 Rules 1 and 3 Civil Procedure Rules SI 71-1.

35 The Applicant contends that it filed HCCS 956/2020 ["the main suit"] which is presently pending before this court. The Applicant contends that its mandate expires/expired on 30 June 2023. The Kingdom of Denmark has been appointed by the development partners under the Plaintiff to take over the conduct of the suit. The

- 5 Applicant contends that is necessary for the effective adjudication of the suit that the Kingdom of Denmark is substituted as the Plaintiff in the main suit and that the Defendants will not suffer any prejudice from the substitution.
- The Applicant contends that the Democratic Governance Facility ["DGF"] is a 10 programme founded by a number of institutions namely the Austrian Development Corporation Agency, The Embassy of Denmark, The Embassy of Ireland, The Embassy of The Kingdom of Netherlands, The Embassy of Sweden, and the EU Delegation in Kampala. Phase 1 of the programme ran 1 July 2011 to 31 December 2016 and was extended to 31 December 2022. The programme had an administrative closing down 15 period ending 30 June 2023.

According to the Applicant, by an addendum executed on 21st June 2023, the programme partners have agreed to close the programme on 30 June 2023, that there are programme matters that are not/ will not be closed or completed by 30 June 2023, 20 including cases in court. According to the Applicant, by virtue of that addendum, all matters relating to ["DGF"] that will not/have not been resolved by 30 June 2023 shall be under the authority and responsibility of the Kingdom of Denmark, acting through the Royal Danish Embassy in Kampala until they are conclusively resolved and therefore the Kingdom of Denmark is authorized to take over on behalf of all the 25 signatories to the addendum/MOU all court cases which were filed for and on behalf of DGF that are still pending.

Accordingly, the Applicant contends that it is in the interest of justice that this Application is allowed.

For the Respondents, it was contended the Applicant was made by an entity that no longer exists, that the Applicant is trying to mislead court instead of withdrawing a suit that they have failed to prosecute, that the suit is moot as all assets it sought to recover have already been handed over, that the Applicant's witness could not have deposed an affidavit on 28 June 2023 and assume that the action would be concluded

before 30 June 2023 meaning that this application is a deliberate attempt to waste the court's time, that it defeats logic to reintroduce the Kingdom of Denmark which was

5 previously struck off from the suit and accordingly, this application ought to be dismissed.

In Rejoinder, the Applicant contended that the Applicant was made while the Applicant was still an existing legal entity and, after the cessation of its operations, its

10 operational made was transferred to the Kingdom of Denmark which has been conducting the said application. The Applicant contends that the present application was brought in time before the closure of the Applicant's operations. The Applicant also contended that it is untrue that all assets had been recovered and the same is the reason why the present suit is presently still pending before this court.

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Representation

The Applicant was represented by M/s S&L Advocates while the Respondents were represented by M/s Ilukor Advocates & Solicitors.

20 Evidence and Submissions

The Applicant led evidence by way of an affidavit in support and affidavit in rejoinder both deposed by Anders Haue Korsbank, the First Secretary of the Royal Danish Embassy. The Respondents led evidence by way of affidavits in reply deposed by Lucas Chelangat, Rev. Aliwa Julius, Cheptoyek Andrew and Wabwire Godfrey.

Both sides made submissions in support of their respective cases which I have read and considered before coming to my decision below, but did not feel the need to reiterate below.

30 Decision

Order 1 Rule 13 of the Civil Procedure Rules provides thus

"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."

The Applicant's application is for the substitution of ["DGF"] with the Kingdom of Denmark as the Plaintiff in the main suit from which this application arises.

5 In **Rajab Mudaki & Ors v Best Kemigisha & Anor HCMA 90/2021**, court held thus: "In my view the power granted under rule 13 is wide and extensive and there is no limitation curtailing or restricting the power of court to add, remove or substitute a party to a suit. The overriding consideration should be that such order to add or substitute should not cause any injustice to any of the parties to a suit and should be 10 geared towards ensuring that all questions in controversy are heard and determined by court to finality.

The application should not be made malafide or with inordinate delays with intent to delay the hearing of the case and a party to be joined as a plaintiff or defendant should 15 enable court to have the questions in controversy handled by court. The addition or substitution should not be granted as a matter of course but should be premised on the relevancy of such a party to have the case fully investigated and determined by court."

20 As noted above a party can move court for substitution of a party under the provisions of Order 1 Rule 13 of the CPR. See also **Walimu Cooperative Savings and Credit Union v Okumu Benjamin & Anor HCMA 101/2022**, **Jethro Jones Opolot & Ors v Attorney General HCMA 687/2021**, **Vastina Kyarisima v Josephine Abaasa HCMA 500/2021**, **Mucunguzi Edgar & Anor v Atukunda Brenda & Anor HCMA 25 116/2022**,

I have also noted the decision of my brother, Justice Stephen Mubiru in **Okway John Kimbo v Odida Nuru & Anor HCMA 39/2016** where he held that powers of substitution of a party could be used to invoke a deceased's interest in proceedings.

30 In this case, it is not the death (or more accurately put, cessation of operations) of a natural person that is involved, but the death (or more accurately put, cessation of operations) of an unnatural person, namely the Applicant.

I have considered the Applicant's application and the objections to it.

First, the Respondent contends that there is no Applicant has the operations of the Applicant have ceased. I note that the Applicant had an administrative cessation date

- 5 of 30 June 2023 and this application was filed on 29 June 2023. It means therefore that at the time of filing, the Applicant was in existence. Moreover, I have noted the cessation date indicate was an administrative cessation date, there is no evidence that, beyond that date, the Applicant ceased to exist as an entity. It is possible for a legal entity to stop operations but, without measures to end its existence (such as, in the
- 10 context of a company, deregistration) the same remains in existence albeit dormant.

Even if it could be said that the Applicant is no longer in existence, the same would not, in my view, affect the competence of this application. Section 98 of the Civil Procedure Act provides thus:

15 "Nothing in this Act shall be deemed to limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court."

The powers of the court under the above provision are broad, empowering this court 20 to issue any orders for the interests of justice. See **Green Meadow Limited v Patrice Namisono HCMA 1368/2022**, **Kagumaho Musana v Rama and 3 Others HCMA 933 of 2019** and **Tullov Uganda Limited & Anor v Jackson Wabyona & Ors HCMA 443/2017**, **Stanbic Bank Limited v Kesacon Services Limited HCMA 724/2023**

- 25 This provision, together with Order 1 Rule 13 allows the court to substitute an existing party with a non-existent one. Under Order 1 Rule 13, and, considering the provisions of Section 98 above, the court may make an order of substitution even when a formal application has not been made.
- 30 In my view, once an application has been made by an existing entity to substitute parties, it doesn't matter that the entity later ceases to exist as long as there is a lawfully empowered entity to continue the application to disposal, or if there is not, sufficient litigation steps have been taken to enable the court return a decision. In any case, if the court is made aware of a need for substitution, it may order the same even
- 35 without a formal application.

5 In the premises, I take the view that the Applicant's application is properly before this court.

As to its merits, the Applicant's objections were essentially that

- (a) The Kingdom of Norway has already been struck off this application and this is 10 a scheme to re-add them.
- (b) The Respondents intend to apply for security for costs.
- (c) The Application seeks to re-activate a suit which the Applicant had abandoned to prosecute

- 15 The Respondents did not contest the truthfulness of the assertion that the Applicant's operations were coming to an end and that the Kingdom of Norway had been empowered to take over conduct of court proceedings involving ["DGF"] that were active beyond the cessation date.
- 20 In my view, the decision of this court striking off the Kingdom of Norway as a party to this suit previously has no bearing on this application. That is because this court found in that application that it is ["DGF"] and not the Kingdom of Norway that was suited to continue this matter as Plaintiff. ["DGF"] has now transferred those rights to the Kingdom of Norway. In my view, the Kingdom of Norway would be joining in the same
- 25 stead as ["DGF"] and therefore the circumstances of the previous ruling are not the same as these ones.

In respect of costs, in my view, the Respondents may make an application for security of costs. The same will be heard and determined on its own merits. I have found no

- 30 law or precedent, and the Respondents have not supplied any that supports the proposition that an application for security for costs, let alone the intention to make the same, is a bar or has a bearing in the determination of an application for substitution of a Plaintiff.
- 35 Finally, regarding abandonment, in my view, Order 11A Rule 1(6) and Order 17 Rule 5 of the CPR provide, among other provisions, provide remedies where there is
- 5 abandonment/neglect of prosecution of a suit. What is clear is that the main suit has not abated, and is currently pending normally before this court. In the circumstances, I see no basis in law for this to be a ground for objection of the Applicant's application. In my view, the aim of this application is to preserve the action by allowing a party that is functional replace one that has stopped operations. The court typically does
- 10 this where there is death of a natural party, assignment of rights forming the basis of an action, merger or sale of a party among other circumstances. This is to enable the party that stands in the shoes of the original litigating party continue the action, and have the same determined against existing parties. As seen in those circumstances, the death of a party or cessation of existence of a party does not, by itself alone, 15 determine a suit filed by it or to which it is party where substitution is legally permissible. Accordingly, the precedents relied on by Counsel for the Respondent were not helpful or applicable as they dealt with cases where parties who were intended to be substituted were non-existent from the start which is different from a

party being in existence and then ceasing to so be.

In a suit, a party asserts legal rights and seeks reliefs. By way of analogy, a party may own property (such as land) which is registered in their names. Would the death of such a party mean that, since there is a non-existing person, the certificate of title would be of no legal effect?

30 party that was non-existent from the start as there was no valid suit to begin with.

35 Conclusion:

- 5 (a) Leave is hereby given to substitute the Democratic Governance Facility ["DGF"] with the Kingdom of Denmark as Plaintiff in Civil Suit No. 956 of 2020.
- (b) An amended plaint reflecting only in (a) above shall be filed and served within 15 days from the date of this ruling.
- (c) An amended defence/defences reflecting only in (a) above shall be filed and 10 served within 15 days from the date of service of the amended plaint.
- (d) An amended reply to the defence (if any) reflecting only the change in (a) above shall be filed and served within 10 days from the date of service of the amended written statement of defence.
- (e) The Kingdom of Denmark or its counsel shall take the necessary steps to set
- 15 this suit down for hearing.
- (f) Costs shall be in cause.

[illegible]

25 Judge

4th January, 2024

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Prepared on 13 October 2026 · Esheria