

UGANDA / JUDGMENT

Drani & Ors v Omara & Ors
(Miscellaneous Application No 289 of
2015) [2016] UGHCFD 23 (14 July 2016)
[2016] UGHCFD 23

COURT

HC: Family Division (Uganda)

BEFORE

Tuhaise, J

CASE / FILE NUMBER

Miscellaneous Application No 289 of 2015

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THE REPUBLIC OF UGANDA**IN THE HIGH COURT OF UGANDA AT KAMPALA****FAMILY DIVISION****MISCELLANEOUS APPLICATION NO 289 OF 2015****ARISING FROM CIVIL SUIT NO 135 OF 2015**

1. EMILY DRANI
2. BOB DRANI
3. CHARLETTE DRANI
4. ESTHER DRABIL DRANI
5. JANE DRANI
6. STEPHEN DRANI
7. VICTORIA DRANI
8. CLARE DRANI.....APPLICANTS

VERSUS

1. THOMAS OMARA
2. MAUREEN OMARA
3. HELEN BUSI

4. WYCLIFF MULINDWA.....RESPONDENTS

BEFORE HON LADY JUSTICE PERCY NIGHT TUHAISE

RULING

This was an application by Notice of Motion filed under Order 1 rules 10(2), Order 50 rules 1, 2 & 3 of the Civil Procedure Rules (CPR); and section 98 of the Civil Procedure Act. It seeks orders that the respondents be joined as co defendants to HCCS No 135/2015, and that costs of the application be provided for.

The grounds of the application are that the presence of the respondents is necessary to enable the court effectually and completely adjudicate upon the issues before court; and that it is just equitable and in the interests of substantive justice that the respondents be joined as defendants to HCCS No 135/2015.

The application is supported by the affidavit of Bob Drani to which Hellen Busi and Wycliffe Mulindwa filed affidavits in reply to which Emily Drani filed an affidavit in rejoinder. Counsel filed written submissions within schedules set by court.

When the application came up for hearing, Counsel Patrick Alunga, who was representing the 2nd respondent, informed court that the 1st respondent passed on. He also informed court that he did not intend to oppose the application. Consequently this court gave directions that the 2nd respondent be added as a co defendant in HCCS 135/2015. The application therefore proceeded against the 3rd and 4th respondents only.

The affidavit in support of the application sworn by Bob Drani (2nd applicant) states that he and other plaintiffs are challenging Anthony Marri K. Drani in HCCS 135/2015 for mismanagement of their late father's estate; that part of the mismanagement was that the said Anthony Marri K. Drani had sold part of the estate land to the respondents; that they are seeking for orders cancelling all transactions between the respondents and Anthony Marri K. Drani on the estate of their late father; that the presence of the respondents is necessary to enable the court to effectually and completely adjudicate upon the issues before it; and that it is just, equitable and in the interests of justice, in addition to avoiding multiplicity of suits, to join the defendants to the suit.

Order 1 rules 10(2) provides as follows:-

“The court may at any stage of the proceedings either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out,* and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order the court effectually and completely to adjudicate upon and settle all questions involved in the suit, be added.” (emphasis added).

The principles under which such application can be allowed are set out as follows:-

1. The plaintiff is at liberty to sue anybody he thinks he has a claim against and cannot be forced to sue somebody. Where he/she sues a wrong party he/she has to shoulder the blame. See **Bahemuka V Anywar & Another [1987] HCB 71.**
2. Court has no jurisdiction under O.1 r.10(2) to order the addition of parties as defendants where the matter is not liable to be defeated by non - joinder; when they were not persons who ought to have been sued in the first place; and where their presence as a party is not necessary to enable court effectively to adjudicate on all the questions involved.
3. A defendant will not generally be added against the plaintiff's wish **Coffee Works (Mugambi) LTD V Kayemba HCCS No 505/1963 MB No 56/1964.**

In addition, the Supreme Court in **Departed Asians Property Custodian Board v Jaffer Brothers Ltd Civil Appeal No 9/1998**, citing the English case of **Amon V Tuck & Sons Ltd (1956) ALL E R p.273**, decided that a party may be joined in a suit, not because there is a cause of action against it, but because the party's presence is necessary in order to enable the court effectually and completely adjudicate upon and settle all questions involved in the cause or matter.

The claim in HCCS No 135/2015 from which the instant application arises is that the defendant Anthony Marri Drani who holds letters of administration to the estate of the late Charles Origa Futo Drani has grossly mismanaged the affairs of the said estate to the detriment of its beneficiaries. The prayers in the plaint include a declaration that the defendant is incapable of administering the estate; an order for revocation of the defendant's letters of administration; general damages for fraudulent sale of part of the estate; cancellation of all illegal transactions restraining the defendant from continued assumption of the estate; and for the defendant to account for the administration of the estate; costs of the suit and any other relief deemed fit by court.

The affidavit in reply sworn by Helen Busi (3rd respondent) states that the dispute in HCCS 135/2015 is purely a family dispute and the same can be solved internally; that the pleadings in the said suit do not disclose a cause of action in favour of the plaintiffs/applicants against the 3rd respondent; that she does not know the plaintiffs concerning the land she bought from the defendant in HCCS 135/2015; that if the applicants have any interest in the land they are guilty of dilatory conduct and negligence for failure to follow up the progress and registration of their land/estate of their late father; that joining her as a defendant will take her through unnecessary expense; that she is a **bona fide** purchaser for value without notice; that in case the application is granted costs should be awarded to the 3rd respondent; and that the intended suit has no merit and has very low chances of success to the 3rd respondent.

The affidavit in reply sworn by Wycliffe Mulindwa (4th respondent) states that he bought two pieces of land from Anthony Marri K. Drani who is lawfully registered on the land in his individual capacity but not as administrator of the estate of Charles Origa Futo Drani his late father; that he has been in quiet possession of the same for more than 15 years; that it is not true

that his being added as a co – defendant in the suit will assist court in fully adjudicating upon the matters before it regarding the administration of the estate of the late Charles Origa Futo Drani as he has never dealt with the estate at all; that the applicants have no cause of action against him; they should be at liberty to call him as a witness as opposed to being joined as a party to the family suit; and that joining him as a party will occasion him unwarranted injustice in terms of court attendances, legal costs and time in defending a strange suit.

The affidavit in rejoinder by Emily Drani (1st applicant) states that HCCS 135/2015 seeks to have cancellation of titles arising from fraudulent sales of part of the estate of the late Charles Origa Futo Drani to the respondents and mismanagement of the estate among others; that the said orders will affect third parties who include the respondents; that the respondents were brought in to allow them to defend themselves; that the applicants are beneficiaries to the estate and the land currently occupied by the respondents; that despite notices from the applicants, the respondents colluded with Anthony Drani the administrator of the estate to deprive the applicants of their entitlement; that the 4th respondent confirms having purchased land from the defendant; and that the land forms part of the estate.

It is apparent from the pleadings and the affidavit evidence that the dispute in HCCS 135/2015 is about the administration of the estate of the late Charles Origa Futo Drani. The plaintiffs in that suit are alleging gross mismanagement of the said estate by the defendant Anthony Marri K. Drani. The particulars of the alleged mismanagement include deliberate sale of land comprised in Block 241 plots 13, 41 and 50 stated to be part of the estate; renting and sale of plots out of part of the estate; transferring part of Block 241 plot 37 into his personal names rather than as administrator of the estate; and thereafter selling part of it leaving a residue as plot 47 and 50. The prayers in the plaint include general damages for fraudulent sale of part of the estate and cancellation of all illegal transactions restraining the defendant from continued assumption of the estate.

The 3rd and 4th respondents have stated in their affidavits in reply that there is no cause of action against them. However, as seen from the decision in **Departed Asians Property Custodian Board v Jaffer Brothers** already cited, a party may be joined in a suit, not because there is a cause of action against it, but because the party's presence is necessary in order to enable the court effectually and completely adjudicate upon and settle all questions involved in the cause or matter.

It is clear from the plaint that the plaintiff's claim and the orders sought against the defendant concern the defendant's allegedly selling land forming part of the estate of the late Charles Origa Futo Drani illegally. The 3rd respondent agrees in her affidavits in reply that she bought land from the defendant in HCCS No 135/2015, but argues that the defendant was selling it in his personal capacity and not as administrator of the estate; and that she is a *bona fide* purchaser for value without notice. The 4th respondent also agrees he bought land from the same defendant but states it does not form part of the estate.

On applying the tests laid out by the cited cases, it is clear the nature of the orders sought by the plaintiff against the defendant in HCCS 135/2005 would legally affect the interests of the 3rd and 4th respondents. It would, in addition, be desirable to join the said parties to the suit to avoid multiplicity of suits, in that the eventuality of the plaintiffs suing the respondents to recover the disputed land, or *vice versa* if orders are made by court for cancellation of the 3rd and 4th respondents' certificates of title, is avoided. As already stated above, the test to apply is not because there is a cause of action against them, but because the parties' presence is necessary in order to enable the court to effectually and completely adjudicate upon and settle all questions involved in the cause or matter. The matters raised by the 3rd and 4th respondents can only be raised at the commencement of the suit, or in the course of raising their defence, once they are made parties to the suit.

The respondents also stated in their respective affidavits in reply that joining them as parties will occasion them unwarranted injustice in terms of court attendances, legal costs, expenses, and time in defending a strange suit. This however cannot be an excuse for not joining them as co defendants in the suit, since one of the principles highlighted in such applications is that a party who sues a wrong party has to shoulder the blame. In the eventuality of the said respondents being cleared of blameworthiness after the case is heard on the merits, the plaintiffs would normally meet the respondents' costs in the suit unless there are other negating factors. In any case, it is only just, even for the said respondents, that any party ought to be heard before a decision affecting his or her interests is made by court.

Thus, on basis of the adduced evidence and the existing laws, it is my finding that the 3rd and 4th respondents' presence is necessary for the effective and complete adjudication and settlement of all issues in HCCS 135/2015, and for purposes of avoiding multiplicity of suits.

The application is allowed.

Costs will be in the cause.

Dated at Kampala this 14th day of July 2016.

Percy Night Tuhaise

Judge.

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