

Kanyike v Nyakana and Others
(MISCELLANEOUS APPLICATION NO. 0908
OF 2024) [2025] UGHC 258 (5 May 2025)
[2025] UGHC 258

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- c) Costs of this application be provided for.

Background:

- 2. The grounds of this Application are laid down in the Affidavit in support of the Notice of Motion by Kanyike Fred dated 11th April, 2024 which briefly are;
- 1. That the Applicant was given the equitable interest in the suit land by his late grandmother the late Nakalembe Jane in the year 2005 as a gift inter- vivos measuring approximately 40 decimals which was a kibanja at the time. That after the passing of the aforementioned Nakalembe Jane, he engaged the then registered proprietor Mayanja Steven and purchased the registrable interests of the suit property.
- 2. That the beneficiaries of the estate of the late Nakalembe Jane including Mayanja Steven engaged the services of Betunda Yusuf, a lawyer, to oversee the subdivision and subsequently transfer to the respective owners. However, after completion of the subdivision the 2nd Respondent connived with the intended 4th and 5th Respondents and subdivided the Applicant's land without his consent to create Kibuga Block 23 Plot 929 and transferred the said land into the names of the 2nd Respondent.
- 3. That the Applicant conducted a physical search at the Land office upon which anomalies were identified on the transfer forms that passed title which were later confirmed by a police forensic report dated 7th February, 2024 as forgeries.
- 4. That the Applicant stated that he sued the 1st, 2nd & 3rd respondents in Civil Suit No. 183 of 2021. That he has since the filing obtained material facts that disclose a cause of action

against the 4th and 5th respondents. That these facts affect the Applicant's possession and his interest in land described as Kibuga Block 23 Plot 929. The presence of the 4th and 5th respondents is necessary and crucial for a comprehensive investigation and determination of all issues forming the main suit.

- 3. The Application was opposed through an Affidavit in reply by Bernard Mabonga. The Applicant filed an Affidavit in rejoinder.

Submissions

- 4. The Court directed parties to file written submissions regarding the Application and only the Applicant complied.

Representation

- 5. The applicant is represented by M/S TAYEBWA, SSERWADDA & CO. ADVOCATES and the 1st, 2nd & 3rd respondents were all represented by M/S MUSOKE & MARZUQ ADVOCATES.

Issue

6. Whether the applicant has furnished sufficient grounds to be granted leave to add Betunda Yusuf and Commissioner Land Registration as the 4th and 5th defendants in Civil Suit No 183 of 2021?

Resolution and determination of the issue;

Order 1 rule 3 of the Civil Procedure Rules provides that: "*All persons may be joined as defendants against whom any right to relief in respect of or arising out of the same act or transaction or series of acts or*

transactions is alleged to exist whether severally, jointly or in the alternative where, if separate suits were brought against those persons, and common question of law or fact would arise"

Order 1 rule 10 (2) of the Civil Procedure Rule provides that: " *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 as defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or as defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit, be added*"

7. The Applicant's counsel submitted that the Applicant filed Civil Suit No. 183 of 2021 against the Respondents the subject matter of which is land described as Kibuga Block 23 Plot 929 at Lungujja. An Application for leave to amend the plaint for addition of parties was filed by the Applicant vide Miscellaneous Application No. 0908 of 2024. The Applicant referred to the decision of the Court in *Makula International Vs. His Eminence Cardinal Wamala Nsubuga (1982) HCB 24* wherein court held that; once an illegality is drawn to the attention of court, it overrides all matters including an admission and such illegality cannot be allowed to stand. The Applicant further referred to the case of *Nabukenya Sarah & 6 others Vs. Sulaiman Mukasa & Sons Ltd & 5 others HCMA 193 & 231 of 2022* wherein Justice Ssekaana Musa citing *Somson Sempasa Vs. P. K Sengendo HCMA no. 577 of 2013* stated that the purpose of joinder of parties

is to enable court to effectively and completely deal with the matter in controversy and avoid multiplicity of proceedings.

- 8. It is important to note that there are four principles to be recognised as governing the exercise of Court's discretion in allowing amendments. According to *Gasu Transport Services (Bus) Ltd Vs. Oben [17990-7994] EA, 8,* the four principles to be recognised as governing the exercise of discretion in allowing amendments are:
 - 1. The amendment should not work any injustice to the other side.

- 2. Multiplicity of proceedings should be avoided as far as possible and all amendments which avoid such multiplicity should be allowed.
- 3. An application which if made malafide should not be granted.
- 4. No amendments should be allowed where its expressly or impliedly prohibited by any law.
- 9. The Applicant believes he has a cause of action against the intended 4th and 5th defendants citing allegations of fraud between the 2nd Defendant and the intended 4th & 5th defendants to create Block 23 Plot 929 using forged mutation and transfer forms. **In the** *Deported Asian's Property Custodian Board Vs. Jaffer Brothers S. C. C. A No. 9 of 1998 [1999] UGSC 2,* Court noted that "that for a party to be joined on the ground that it is necessary for the effective and complete settlement of all questions involved in the suit, it is necessary to show either that the orders sought would legally affect the interest of that person and that it is desirable to have that person to avoid the multiplicity of suits"

J. N Mulenga JSC summarized the position as to addition of parties as follows; 'For a person to be joined on ground that his presence in the suit is necessary for effectual and complete settlement of all questions involved in the suit, one of two things have to be shown. Either it has to be seen that the orders which the plaintiff seeks in the suit would legally affect the interests of that person, and that it is desirable for avoidance of multiplicity of suits, to have such person joined so that he is bound by the decision of the court in the suit. Alternatively, a person could not effectually set up a desired defence unless that person was joined or an order made that would bind that other person.

- 10. The Applicant in the Affidavit in support of motion states his case against the intended defendants on ground of illegal creation of subdivisions and subsequent fraudulent transfer of the suit property allegedly perpetrated by the intended 4th & 5th defendants. If the application is denied, it would be necessary for the applicant herein to institute a separate suit against those respondents.
- 11. Proper parties are those, though not actually interested in the claim are joined as parties for some reasons. Desirable parties are those who have an interest of a suit or may be affected by reasons thereof. While necessary parties are those who not only have interest in the matter, but also who in their absence, the proceedings could not be fairly and effectively be dealt with. See *Chief of Army Staff V Lawal (2012) 10 NWLR p 62*.
- 12. Although the plaintiff is at liberty to decide who shall be a defendant in their case, they must prove the necessity of the Parties they seek to add in the effectual resolution of all the issues in contention involved in the case.

- 13. The applicant submitted that it necessary to add the intended 4th and 5th defendants for failure to comply with the signed deed plan between himself and the family/ beneficiaries of the estate of the late Nakelembe Jane that resulted into creation of the suit land. I find the intended 4th and 5th defendant within the degrees of necessary persons to civil suit No 183 of 2021 for purposes of effectively determining the issues involved therein.

I should emphasise Court's discretion (under Order 1, Rule 10 (2) of the Civil Procedure Rules, supra) to order for a Party to be joined to a Suit if the said joinder will provide an opportunity for an in-depth probe and resolution of all the issues concerning the case. (*See Kololo Curing Co. Ltd Vs West Mengo Co-op Union Ltd (1981) HCB 60*).

I find that applicant's plea to add the intended 4th and 5th defendants will not prejudice the defendants and would guide Court in its quest to dispose of the main suit, to effectively and completely settle all questions on how the subdivision in issue involving creation of Kibuga Block 23 Plot 929 was effected and the legality of the subsequent transfer of the suit land into the names of the 2nd respondent.

14. Conclusion

- 1. The Application to amend the Plaintiff and add Betunda Yusuf and Commissioner Land Registration as the 4th and 5th Defendants in Civil Suit 183 of 2021 is allowed.
- 2. The plaintiff shall file an amended Plaintiff on all the Defendants and in Court by 14th May, 2024.
- 3. The rest of the parties to the suit shall observe the time lines for filing their respective pleadings as provided in the Civil Procedure Rules.
- 4. Costs shall abide the outcome of the main suit.

I SO ORDER.

NAKIGANDA IDA JUDGE 5th May, 2025

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