

UGANDA / JUDGMENT

Karamagi v Kagenda (HCT-CV-MA 99 of 2024) [2025] UGHC 138 (28 February 2025)

[2025] UGHC 138

COURT

High Court of Uganda

BEFORE

Wagona, J

CASE / FILE NUMBER

HCT-CV-MA 99 of 2024

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT FORT PORTAL

HCT-CV-MA-NO. 99 OF 2024

[ARISING FROM HCT – 01 – CV – CS – NO. 0072 OF 2023]

ERIC KARAMAGI KADURU ::::::::::::::::::::::::::::::::::: APPLICANT

VERSUS

KAGENDA CHARLES ::::::::::::::::::::::::::::::::::: RESPONDENT

BEFORE: HON. JUSTICE VINCENT WAGONA

RULING

Introduction:

The Applicant filed this Application by Notice of Motion under Order 1 Rules 10 (2), 13 and 52 of the Civil Procedure Rules, Section 98 of the Civil Procedure Act, and Section 37 of the Judicature Act seeking the following Orders:

1. That the Applicant, *Eric Karamagi Kaduru*, be added as a Defendant in HCT-01-CV-CS-No.0072 of 2023 and all applications arising therefrom.
2. Costs of the Application be provided for.

Grounds of the Application:

The motion is grounded in the Affidavit of **Eric Karamagi Kaduru** (the Applicant) and that of, ***Kasagama Patrick*** (Defendant in HCT-01-CV-CS-No.0072 of 2023) who deposed in brief as follows:

1. The Respondent instituted HCT-01-CV-CS-No.0072 of 2023 against Kasagama Patrick seeking various orders including a declaration that the suit land comprised in Freehold Register Volume 32 Folio 4 and known as Plot 1 lawfully belongs to the Plaintiff and that the Defendant, ***Kasagama Patrick*** is a trespasser thereon.
2. The Applicant claims ownership of the suit land as a beneficiary under, and is the administrator of the estate of the late ***Rosemary Awino Kaduru*** wife of the late ***Godfrey Kaduru***.
3. The late ***Godfrey Kaduru*** and ***Rosemary Awino*** were in physical possession of the land before the Applicant and upon their demise, the Applicant took possession and has been in possession of the suit land through his caretakers including the said ***Kasagama Patrick***.
4. The Respondent has at all material times been aware that the Defendant in HCT-01-CV-CS-No.0072 of 2023 was in possession of the suit land as the Applicant's caretaker and any outcome of the suit will affect the Applicant's interest and ownership of the land.
5. Since the real issue for determination in the said suit is the ownership of the suit land, it is necessary that the Applicant who claims ownership thereof is made a party to the suit for the court to definitively determine that issue.

Reply by the Respondent:

The Respondent opposed the motion through the Affidavit of ***Mr. Katuramu Keesi***, his lawful attorney, in which it was averred, in brief as follows:

1. The Applicant has no valuable grounds warranting him to be added as a party to HCT-01-CV-CS-No.0072 of 2023.
2. The Applicant has filed this Application as an afterthought since the counterclaim filed by him in HCT-01-CV-CS-No.0072 of 2023 was dismissed by this Honourable Court.
3. The suit land has never belonged to the estate of the late ***Rosemary Awino***.
4. ***Kagama Patrick*** has all along been in possession of the suit land and he even instituted criminal proceedings against the Respondent.
5. The Applicant's presence is not necessary for the effectual or complete settlement of the questions involved in HCT-01-CV-CS-No.0072 of 2023.
6. The Applicant has no legal interest in the suit land.

Representation and Hearing:

Mr. Kateeba Cosma appeared for the applicant, while ***Mr. Isembahemba*** ***appeared*** for the Respondent. Counsel addressed me on the merits of the application by way of written submissions which I have duly considered herein.

Issues:

1. **Whether the Applicant should be added as a Defendant to HCT-01-CV-CS-No.0072 of 2023.**

Submissions:

Learned Counsel for the Applicant cited Order 1 rule 10(2) of the Civil Procedure Rules which 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 court to be just, order that the name of a party of improperly joined, whether 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 to enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit, be added. He further stated that the power to add or strike off a party to pleadings is within the discretion of court which however must be exercised judiciously based on principles and cited the case of **Yahaya Kariisa vs. Attorney General and Anor SCCA No.7 of 1994** in which court observed that the main purpose of joining parties is to enable court to deal with the matter brought before it to avoid multiplicity of pleadings. Counsel stated that ***Kasagama Patrick***, the Defendant in HCT-01-CV-CS-No.0072 of 2023 is the Applicant's cousin and that by letter dated 28th December 2018, the Applicant in his capacity as administrator of the estate of the late ***Rosemary AwinoKaduru***, appointed ***Kasagama Patrick*** as caretaker of the Kaduru family estate, to manage the same on his behalf.

Learned Counsel for the Respondent submitted that **Order 1 Rule 10 (2)** is about misjoinder and non-joinder of parties and that it anticipates a situation where if a party has been improperly joined, such party may be removed, and that if some other person ought to have been a party and was not, he may be joined as a party to the suit. He further stated that the Respondent does not mention anything about the Applicant in his pleadings and that this suggests that the Applicant's presence is not necessary for the effectual or complete settlement of the questions involved in HCT-01-CV-CS-No.0072 of 2023.

CONSIDERATION OF THE APPLICATION:

Issue: Whether the Applicant should be added as a Defendant to HCT-01-CV-CS-No.0072 of 2023.

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 jointly, severally or in the alternative, where, if separate suits were brought against those persons, any common question of law or fact would arise."*

Order 1 Rule 10(2) provides among others that court can order any person

whose presence before the court may be necessary in order to enable the court effectually and completely adjudicate upon and settle all questions involved in the suit, to be added. **Order 1 Rule 5** adds that it shall not be necessary that every defendant shall be interested in all the relief claimed in any suit against him or her. **Order 1 Rules 10 and 5** give Court the absolute discretion to add any person as a defendant where the presence of such person is necessary or where the claim by the plaintiff would ordinarily fall against him or her or where the decision to be made has a consequential effect on his or her interest. The power to order for addition or substitution of a party is discretionary and Court should only invoke the same in deserving circumstances. In **Departed Asians Property Custodian Board vs. Jaffer Brothers Ltd [1999] 1 EA 55** court guided in relation to joinder of a defendant to a suit thus;

*“A clear distinction is called for between joining a party who ought to have

been joined as a defendant and one whose presence before the Court is

necessary in order to enable the court effectually and completely adjudicate upon and settle all questions involve in the suit. A party may be joined in a suit, not because there is a cause of action against it, but because that party’s presence is necessary in order to enable the court effectually and completely adjudicate upon and settle all the questions involve in the cause or matter... For a person to be joined on the ground that his presence in the suit is necessary for effectual and complete settlement of all questions in the suit one of two things has to be shown. Either it has to be shown 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 a person joined so that he is bound by the decision of the Court in that suit. Alternatively, a person qualifies,(on an application of a Defendant) to bejoined as a co-defendant, where it is shown that the defendant cannot effectually set a defence he desires to set up unless that person is joined in it, or unless the order to be made is to bind that person.”*

In **Amon v Raphael Tuck and Sons Ltd 1056 1 ALL ER 273** court further guided thus:

*“*A party may be joined in a suit not because there is a cause of*

action against it, but because that party’s presence is necessary in

order to enable the court effectively and completely adjudicate upon

*and settle all the questions involved in the cause or matter.”**

I have also been persuaded to adopt the reasoning by the Court of Appeal of Kenya in the **Civicon Limited vs. Kivuwatt Limited and 2 Ors [2015] eKLR**, where court unanimously observed as follows:

“Again the power given under the Rules is discretionary which discretion must be exercised judicially. The objective of these ***Rules is to bring on record all the persons who are parties to the dispute relating to the subject matter, so that the dispute may be determined in their**

presence at the time without any protraction, inconvenience and to avoid multiplicity of proceedings. Thus, any party reasonably affected by the pending litigation is a necessary and proper party, and should be enjoined...from the foregoing, it may be concluded that being a discretionary order, the court may allow the joinder of a party as a defendant in a suit based on the general principles set out* *in Order I rule 10 (2) bearing in mind the unique circumstances of each case with regard to the necessity of the party in the determination of the subject matter of the suit, any direct prejudice likely to be suffered by the party and the practicability of the execution of the order sought in the suit, in the event that the plaintiff should succeed. We may add that all that a party needs to do is to demonstrate sufficient interest in the suit; and the interest need not be the kind that must succeed at the end of the trial.” (Emphasis is mine)*

The Court of Appeal in Tanzania in **Tang Gas Distributors Ltd vs. Said & Ors** [2014] EA 448 also gave a persuasive dicta as regards addition of a defendant to a suit thus:

“the power of the court to add a party to *proceedings can be exercised at any stage of the proceedings; that a party can be joined even without applying; that the joinder may be done either before, or during the trial; that it can be done even after judgment where damages are yet to be assessed**; that it is only when a suit or proceeding has been finally disposed of and there is nothing more to be done that the rule becomes inapplicable; and that a party can even be added at the appellate stage.” (Emphasis is mine).*

Angima J in **Sammy Kanyi Kareithi vs. Barclays Bank of Kenya & 2 others; Ross Xavier Whitley (Applicant)** [2021] eKLR commented on the effect of delay to seek an order to add a party on the merit of such application thus:

“Firstly, the court is empowered to join a party to a suit at any stage of the proceedings with or without an application by any party. *Secondly, the mere delay in filing an application for joinder is not fatal. The pending suit is yet to be heard and the Plaintiff has not demonstrated what prejudice it has suffered by the late filing of the application**.” In the case of **Central Kenya Limited v Trust Bank Limited and 5 Ors** [2000] eKLR, the High Court had declined to grant leave to the Appellant to amend its Plaint and to join additional Defendants to the suit. In allowing the appeal, the Court of Appeal held that mere delay was not sufficient ground for declining leave unless such delay was the kind which could prejudice the adverse party beyond compensation in costs.”*

The dominant legal position therefore is that court should grant leave to add a party as a defendant where the presence of such party is required or where he or she will be affected by the decision to be made by Court. Such power may be exercised at any stage of the proceedings before the final judgment is made by court. Therefore, leave should only be denied where in Court’s assessment the presence of such person as a defendant is not necessary or where he or she claims no interest in the subject matter or a busybody to the proceedings.

In the instant Application, the Respondent filed HCT-01-CV-CS-No.0072 of 2023 against Kasagama Patrick seeking among others, a declaration that the suit land located at Miranga, Kisongi Village, Hakibale Sub county, Kabarole District belongs to him; a declaration that Kasagama Patrick is a

trespasser on the said land; orders of, general damages; Mesne profits, permanent injunction, exemplary damages, eviction against Kasagama Patrick and costs of the suit. The Applicant in this Application has demonstrated that the said Kasagama Patrick is merely occupying the suit land as his caretaker and on his behalf. In effect, the Applicant has demonstrated that he is in constructive possession of the suit property implying that any Orders of Court HCT-01-CV-CS-No.0072 of 2023 would affect him. I therefore find that the Applicant's presence would aid court in addressing all disputes over the suit land and avert the possibility of a multiplicity of suits.

I therefore find that this is a proper case where the applicant should be added as

a Defendant to HCT-01-CV-CS-No.0072 of 2023. This application therefore succeeds with the following Orders:

1. **The Applicant, Eric Karamagi Kaduru, shall be added as a Defendant in HCT-01-CV-CS-No.0072 of 2023.**
2. **The Respondent shall file an amended Plaintiff to include Eric Karamagi Kaduru as a Defendant and the same shall be served on him within 15 days from the date of delivery of this Ruling.**
3. **The Applicant shall file his Written Statement of Defence within 15 days from the date of receipt of the Amended Plaintiff.**
4. **No Orders as to costs.**

I so order.

Dated at Fort Portal this 28 day of February 2025

Vincent Wagona

High Court Judge

FORTPORTAL

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Prepared on 14 October 2026 · Esheria