

UGANDA / JUDGMENT

Kyakuhaire v Wokuri (Miscellaneous Application 807 of 2024) [2024]

UGHCLD 156 (4 June 2024)

[2024] UGHCLD 156

COURT

HC: Land Division (Uganda)

BEFORE

Naluzze Aisha Batala, J

CASE / FILE NUMBER

Miscellaneous Application 807 of 2024

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**THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA (LAND DIVISION)
MISCELLANEOUS APPLICATION NO 0807 OF 2024 (ARISING FROM CIVIL SUIT NO
842 OF 2022) KYAKUHAIRE PRIVAH ::::::::::::::::::::::::::::::::::: APPLICANT VERSUS
WOKURI MOSES MUKWASI ::::::::::::::::::::::::::::::::::: RESPONDENT**

BEFORE; HON. LADY JUSTICE NALUZZE AISHA BATALA RULING

Introduction

- 1. This is an application by Notice of Motion brought under Section 33 of the Judicature Act cap 13, Section 98 of the CPA, Order 1 rules 10(2), (4) and (13), Order 52 Rules 1 and 3 of the of the Civil Procedure Rules for orders that;
- i) Daniel Muwonge Mugwanya be added as a Defendant to Civil Suit No.0842 of 2022 and the Complaint, summons be amended and the same be served on him accordingly.
- ii) That the costs of this Application be provided.

Applicant's Evidence;

- 2. The grounds of the Application are contained in the Application and supporting Affidavit of the Applicant Kyakuhaire Privah which briefly are;
- i) The presence of Daniel Muwonge Mugwanya is necessary in order to enable court to effectually and completely adjudicate upon and settle all questions in the suit and avoid multiplicity of suits.

- ii) The Applicant claims an access road over the Defendant's Land which is subject to Civil Suit No.842 of 2022 and Daniel Muwonge Mugwanya is currently in possession of the Defendant's land as the alleged new owner.
- iii) Daniel Muwonge Mugwanya recently erected a wall fence blocking the Applicant to access her land.
- iv) That the Applicant has no alternative access to her land. v) That this Application is necessary to save Court to completely and finally determine all issues in controversy and all multiplicities of legal proceedings concerning any of the matters be avoided.

Respondent's Evidence;

- 3. Mr. Wokuri Moses Mukwasi the Respondent made a reply to the Applicant's Application and Affidavit in which he stated that;
 - i) That he shall raise a preliminary objection to the Application that this Application and civil suit are purely academic and they do not disclose a cause of action against the Respondent as the Applicant is aware that the Respondent had already sold the suit land and no longer has interest in the same way before she purchased the same.
 - ii) That the intended party (Daniel Muwonge Mugwanya) to whom the outcome or any order that may be issued by this court will affect has not been added to this Application, which constitutes a violation of a right to a fair hearing.
 - iii) That this Application is brought in bad faith as it constitutes a new cause of action against a new intended party, and merely seeks to substitute the Respondent as a new defendant since clearly the Applicant sued a wrong party.
 - iv) That the Respondent sold his interest in the suit land to the said Muwonge Daniel Mugwanya on the 3rd day of December 2020, who started using the suit land immediately way before the Applicant purchased in 19th January 2021.
 - v) That the said transfer of interest was also reflected in the Respondent's Defence which was filed on the 14th day of October 2022 and served on the Applicant on the 20th day of October 2022 and therefore it's a falsehood that the Applicant has just discovered that the interest in the suit land had been sold.
 - vi) That the intended party they wish to be added has not been made a party to this Application which violates a right to fair hearing.

Affidavit in Rejoinder

- 4. The Applicant made a rejoinder in which he stated that;

- i) That in rejoinder to paragraphs 4 (a-d) the Respondent through his lawyers filed Civil Suit No. 948 of 2021 on the 1th day of October 2021 where he sought a declaration among others that; he is entitled to 25 decimals of land on Block 189 and 96 land at Seeta Wampewo Kasangati, Wakiso District which is still pending before this court.
- ii) That before the determination of Civil Suit No.948 of 2021 which is still pending before this court, the respondent's lawyers went ahead and prepared a land sales agreement and a one Daniel Muwonge Mugwanya well aware that the Respondent's interest was still subject to adjudication.
- iii) That at the time when the Applicant purchased his land, the Respondent was a witness to the said purchase and participated in showing the Applicant the boundaries and the access road to his land.
- iv) That at the time of filing Civil Suit No. 842 Of 2022 which is pending before this Hon Court, was in possession and staying on the suit land.

Representation;

- 5. The applicant was represented by Mr. Nyango Benard of M/s Volens Advocates whereas the respondent was represented by Mr. Muhumuza Rogers Jemmie of M/s Rwabogo Advocates and solicitors. Both parties filed their affidavits and submissions which I have considered in the determination of this application.

Issues for Determination

- i) **Whether Daniel Muwonge Mugwanya can be added as a party in Civil Suit No.842 of 2022**

Resolution and determination of the issues;

- 6. Both Counsel for the Applicant and Respondent filed written submissions which have been relied on by this court in writing this Ruling.
- 7. 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.

- 8. He further stated that the power to add or strike off a party to pleadings therefore lies 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 [1997] HCB 29** 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.
- 9. Counsel stated that the said Daniel Muwonge Mugwanya has a high interest in Civil Suit No.842 of 2022 as he is in the current possession of the Defendant's land as the alleged new owner and built a fence and blocked the Applicant's access to land.
- 10. Counsel for the Respondent submitted that the intended party to be added was never added onto this Application as a party which affects a fundamental constitutional principle that is a right to fair hearing.
- 11. Counsel further submitted that this Application constitutes a new cause of action against Daniel Mugwanya Muwonge in that the suit shall be rendered redundant as against the current respondent/ defendant.
- 12. In response to the respondent's submissions, counsel for the Applicant submitted that the Application does not violate the said Daniel Muwonge Mugwanya's right to fair hearing rather it is intended to bring him to jurisdiction of this Honorable Court to enable him be heard and substantiate his claim of blocking the access road to the Applicant's land. Counsel submitted that the Respondent is on a wild goose chase by alleging that this Application constitutes a new cause of action.
- 13. That the Applicant's claim in Civil Suit No.842 of 2022 is for an access road which was initially blocked by the Respondent which is allegedly owned by the said Daniel Muwonge Mugwanya who has completely blocked the access road to the Applicant's land.
- 14. Therefore, the Applicant's claim is for an access road and the same has not changed and neither does it constitute a new cause of action.

Determination by Court

15. Whether Daniel Muwonge Mugwanya can be added as a party in Civil Suit No.842 of 2022?

- 16. The substitution, Addition and Removal of parties to a suit is governed by order 1 of the Civil Procedure Rules.
- *17.* Order 1 rule 1 states that; **"*All persons may be joined in one suit as plaintiffs in 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 those persons brought separate suits, any common question of law or fact would arise.*"**

- *18. Order 1 rule 3 of the same rules further states that, any application to add or strike or substitute a plaintiff or defendant may be made to court at any time before trial by motion or summons or at the trial of the suit in a summary manner*.
- 19. The purpose of this rule is to the effect that where another relevant party is deemed fit to be joined, the Applicant can do so as-long as it does not prejudice the other party.
- 20. The power to add or strike off a party to pleadings therefore lies within the discretion of court which must however be exercised judiciously based on sound

principles as per **Yajaya Kariisa Vs Attorney General and Anor SCCA No.7 of 1994 [1997] HCB 29**. The main purpose of joining parties is to enable court to deal with matters brought before it and to avoid multiplicity of pleadings.

- 21. The considerations to have parties added and struck off have been stipulate in the case of **Departed Asians Property Custodian Board vs Jaffer Brothers Ltd [1999] I. E. A 55**, which observed that it is necessary to show either that the orders sought would legally affect the interest of that party/ person and that it is desirable to have that person joined to avoid multiplicity of suits or that the defendant could not effectually set up a desired defence unless that person was joined or an order made that would bind that other person.
- 22. In the case of **Walimu Cooperative Savings and Credit Union Vs Okumu Benjamin and Komakech Amos Pato Misc Application No.101 of 2022 arising out of Civil Suit No. 029 of 2019**.
- 23. It was stated that a review of decided cases and authoritative writing on the subject therefore brings out the factors that have guided courts in an application brought under 0.1 rule10(2) of the CPR. These factors include;
 - i) The need to facilitate the determination of the real questions in the suit, that is, that adding a party would facilitate effective and complete determination

of the suit. There is thus no need to first have a cause of action against the person sought to be joined.

ii) For a person to be joined on the ground that his or her presence in the suit is necessary for effectual and complete settlement of all questions involved in the suit, the person must show:

- a) Either that the orders which the plaintiff seeks in the suit would legally affect the interests of that person or that it is desirable for avoidance of multiplicity of suits so that he/ she is bound by the decision of the court in that suit or
- b) Where it is shown (on application by the defendant) that the defendant cannot effectually set up a defence he/she desires to set up unless that person is joined in it, or unless the order to be made is to bind that person.

iii) The need not to add a party against the will of another, especially where adding a party is opposed by the opposite party. This is common in situations where a person seeks to join a suit as a defendant against the plaintiffs wishes.

iv) The requirement that a defendant to be added must be one against whom the plaintiff has some cause of complaint which ought to be determined in the suit.

v) Court has jurisdiction under O.1 rule 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 the court to effectively adjudicate on all questions involved.

vi) Where adding a person would lead to introducing a new cause of action, a court ought to refuse the request to add a party.

vii) Where adding a party would alter the nature of the cause, the same ought to be declined.

- 24. In the circumstances laid out in the above Application, since it is laid out that a one Daniel Muwonge Mugwanya has an interest in the suit land as the alleged new owner of the land, I find it appropriate to add him as a party to the head suit to be determined finally and avoid litigating over the same matter.
- 25. I find that this addition of Daniel Muwonge Mugwanya does not in any way cause an injustice to the Respondent and similarly as counsel for the Applicant submitted, no new cause of action is introduced as the Applicant's claim is for an access road and the same has not changed and neither does it constitute a new cause of action.
- 26. I therefore allow this Application and order as follows;
- i) That Daniel Muwonge Mugwanya be added as Defendant in Civil Suit No. 842 of 2022.
- ii) That the Applicant shall file an amended Complaint to include Daniel Muwonge Mugwanya as Defendant and the same shall be served on him within 14 days from the passing of this ruling.
- iii) That all defendants shall be required to file their Written statements of Defence within 21 days from the date of filing the amended Complaint.
- iv) No orders as to Costs.

I SO ORDER.

NALUZZE AISHA BATALA**JUDGE****04/06/2024**

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