

UGANDA / JUDGMENT

Lenard Price v andrew Muwonge and Anor (Civil Miscellaneous Application No. 51 of 2020) [2021] UGHCLD 77 (22 April 2021) [2021] UGHCLD 77

COURT

HC: Land Division (Uganda)

BEFORE

Nkonge, J

CASE / FILE NUMBER

Civil Miscellaneous Application No. 51 of 2020

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(LAND DIVISION)

MISCELLANEOUS APPLICATION NO.51 OF 2020

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(ARISING FROM CIVIL SUIT NO.454 OF 2014)

LENARD PRINCE (LASLe)

(Suing through his lawful attorney

Nsamba

Michael):::

\$10\$

VERSUS

1. ANDREW MUWONGE

2. EDWARD KABUGO

SENTONGO:::

Before: Lady Justice Alexandra Nkonge Rugadya.

Rulina.

This application was brought by Notice of Motion under the provisions of Section 98 of the Civil Procedure Rules Cap.71 and Order 1 rule 10 (2) of the Civil Procedure Rules S. I 71-1 seeking for orders that the applicant

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be allowed to join **Civil Suit No. 454 of 2014** as a plaintiff, and costs be in the cause.

Grounds of the application:

The grounds of the application as contained in the affidavit in support of the motion of Mr. Nsamba Michael are that in September 2010, Mr. Lenard 25 Prince, the applicant herein purchased land comprised in LRV 1882 Folio 17 Mawokota Block 211-215 plot 2 at Serinya Mpigi district (hereinafter

referred to as the "suit land") and that he was to get the title to the suit land after paying the balance of the purchase price.

That sometime in 2019, however he was informed that this court had issued some orders in respect of the suit land. That he was informed by his lawyers

that a one Mr. Andrew Muwonge had sued Edward Kabugo Sentongo in **Civil* \$\\mathsf{S}\$ Suit No.454 of 2014* for recovery of a certificate of title for the suit, arising from the defendant's breach of contract.

Further, that he was advised that since the suit land was the same as the applicant's land, he had sufficient interest in the said suit and that it would be prudent for him to join the case as a plaintiff.

The application is opposed by the \$2^{nd}\$ respondent who filed an affidavit in reply wherein he stated that this application does not meet the requirements for the applicant to be added as a party to the main suit since he has no cause of action against the 2nd respondent and that the contents of paragraphs 2,

3, 6,7, 8 & 9 of the applicant's affidavit in support are not within his 15 knowledge.

The \$2^{nd}\$ respondent further averred through affidavit evidence that he was approached by Semujju Abasi and Iga Lawrence the son of Muwonge Andrew, who approached him with a copy of the certificate of title of the suit land and informed him that the suit land was for sale.

That he went to the suit land with Semujju and Iga and when he asked to meet the owner to show him the boundaries of the land, it is the 2nd respondent who pointed out the boundaries for him. That the 1st respondent confirmed that the was the lawful owner of the land which was vacant,

then sold him the land for a total of *Ug.x 140,000,000/=*. 25

Further, that the 2nd respondent conducted a boundary opening exercise during which it was established that part of the land was occupied by Mugisha Nicholas a *kibanja* interest owner, while a one Bonny Kiwanuka held a kibanja interest in respect of 4.4 acres on plot 2, for which he was never compensated.

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That it was agreed that the balance of the purchase price would be paid upon resolution of the said disputes. That the 1st respondent then instituted the HCCS No.454 of 2014 against the 2nd respondent.

It was further deponed that the suit land is still registered in the names of the 1st respondent who is still in occupation and not the applicant. That the applicant has no cause of action against the 2nd respondent since he has never dealt with him and that the matter can be settled without the applicant's presence, since his legal rights will not be affected, and that the applicant only has a cause of action against the 1st respondent, with whom he executed an agreement for the suit property. 10

In rejoinder, it was deponed for the applicant that he bought the suit land in 2010 long before the 2nd respondent allegedly bought the same and that he was immediately handed vacant possession. That from the pleadings on HCCS No.454 of 2014, the 2nd respondent bought the same piece of land from the 1st respondent.

That the applicant has a high interest in the land and that his cause of action is clearly expounded and only seeks recovery of the certificate of title from the 1st respondent, therefore his presence is necessary for the effective and complete settlement of all questions involved in the suit. That the adding the applicant as a party will not amount to a misjoinder of parties or causes of action and that he will be prejudiced if this application is not granted.

Representation.

The applicant was represented by *M/s Nakagga & Co. Advocates* while the 2nd respondent was represented by *M/s Lukwago & Co. Advocates*. Counsel for both parties filed their written submissions as directed by this Court.

I have carefully read and considered the pleadings, evidence and submissions of both parties and the following are in my opinion, the issues for determination by this Court;

1. Whether the applicant is a necessary party to High Court Civil Suit No. 454 of 2014 to warrant his addition as a party?

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2. What remedies are available to the parties?

Resolution of Issues.

Issue 1: Whether the applicant is a necessary party to High Court Civil Suit No. 454 of 2014 to warrant his addition as a party?

Order 1 rule 1 of the Civil Procedure Rules S. I 71-1 empowers Court to $\$ \text{mathsf{S}} \$$ join parties who may have a claim or relief on the subject matter under issue.

Order 1 rule 10 (2) of the Civil Procedure Rules 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 defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, 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."

For a party to be joined on ground that his presence 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 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. (Departed Asians Property Custodian Board v. Jaffer Brothers Ltd [1999] I. E. A 55; See also: Gokaldas Laximidas Tanna v. Store Rose Muyinza, H. C. C. S No. 7076 of 1987 [1990 – 1991] KALR \$21.\$)

The purpose of joinder of parties is therefore to avoid multiplicity of suits. Under **Section 33 of the Judicature Act (Cap. 13)** court has powers to grant remedies so that as far as possible all matters in controversy between the

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parties are completely and finally determined and all multiplicities of legal proceedings concerning any of the matters avoided.

In the instant case, the applicant seeks to be joined as a plaintiff in the main suit which was filed by the 1st respondent, the registered proprietor of the suit

land. The 1st respondent purportedly sold the suit land described as S Mawokota LRV 1882 Folio 17 Block 211-215 plot 2 at Serinya, to the applicant vide an agreement dated 4th September 2010, **Annexure "A"** of the applicant's affidavit in support of the application.

In **Civil Suit No. 454 of 2014**, the 1st respondent seeks orders for recovery of the certificate of title against the 2nd respondent for alleged breach of a sale agreement dated 3rd May 2013, in respect of the same land comprised in *LRV* 1882 Folio 17 Mawokota Block 211-215, plot 2, at Serinya.

In those circumstances, it would be appropriate and in the interest of justice that all matters touching the subject matter of the suit land be determined finally and completely, to avoid litigating over the same matters again.

This application is hereby granted.

Costs in the cause.

Alexandra Nkonge Rugadya Judge 22nd April 2021.

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Prepared on 14 October 2026 · Esheria