

UGANDA / JUDGMENT

Nakamatte v Ssenyange and 4 Others (Miscellaneous Application 962 of 2022) [2023] UGHCLD 206 (13 July 2023) [2023] UGHCLD 206

COURT

HC: Land Division (Uganda)

BEFORE

Nassuna Matovu, J

CASE / FILE NUMBER

Miscellaneous Application 962 of 2022

Source: ulii.org · Research copy typeset by Esheria. Not court-issued or certified.

IN THE HIGH COURT OF UGANDA AT KAMPALA (LAND DIVISION) $\mathbf{\$ \mathbf{\$}}$ **MISCELLANEOUS APPLICATION No. 962 of 2022**

(ARISING FROM CIVIL SUIT No. 555 of 2017)

NAKAMATTE NAMUSISI ===== APPLICANT VERSUS

- 1. SALONGO SSENYANGE
 - 2. SSEMUKUYE
 - 3. ROSE KITAKA (Administrator of the Estate of the Late Yuda Kitaka
 - 4. MUTEBI RONALD
 - 5. COMMISSIONER REGISTRATION LAND =====
- RESPONDENTS**

BEFORE: HON. JUSTICE FLAVIA NASSUNA**RULING.**

- 1. This application was brought under the provisions of S.98 of the Civil Procedure Act, S.33 of the Judicature Act, O.1rr10 and 0.6rr19 and 22 of the Civil Procedure Rules. It was seeking for orders that:

- a. Leave be granted to remove Yuda Kitaka, the 3rd Defendant who had been removed by court before but was mistakenly included in the amended plaint dated 20th February, 2020,
- b. Leave be granted to add Rose Kitaka, the administrator of the estate of the late Yuda Kitaka as a party to the suit.
- c. Ssemukuye, the 2nd Defendant whose name was omitted in the amended plaint by oversight be maintained in the pleadings
- d. Costs of the Application be provided for.

were supported by an affidavit sworn by the applicant. Grounds of the application were laid in the chamber summons and affidavit in support. Briefly the grounds were that;

'- - ^o... ,. J

- a) the applicant through her first lawyers; M/s Kajeke, Maguru & Co. Advocates filed an amended plaint on the 26th day of October, 2018 which included Ssemukuye as a second defendant.
- b) she then filed another amended plaint on the 20th day of Februar5r, 2020 which by oversight removed Ssemukuye, the 2"d defendant and also by oversight added Yuda Kitaka, a deceased person.
- c) on the 17n day of February, 2022 , she received certified copies of documents from the Commissioner Land Registration and that is when she got to know that Yuda Kitaka was deceased and that there was an administrator to his estate one Rose Kitaka.
- d) the Applicant has been informed by her lawyers that the court record shows that apart from the l"t and 2"d defendants who have a defence on record, the rest of the defendants have no defence and hence the removal of Yuda Kitaka and adding his administrator does not prejudice their case in any way.
- 3. The respondents filed an affidavit in reply which was sworn by one Mukasa Charles, an advocate of the high court by

which they called upon court to dismiss the application with costs. Briefly they maintained that;

- a) the application is barred in law and an abuse of court process.
- b) the applicant's affidavit in support of the application is full of falsehoods, is a total nullity, a perpetration of illegalities, and barred at law.

- e) in specific reply to the orders sought, it is a settled principle of law that pleadings cannot be amended to substitute a nonexisting party.
- f) before the applicant could amend the pleadings, she formally applied for leave to amend the plaint before this honourable court and the application was granted on merit. It cannot therefore be an oversight to remove a party plus all the facts constituting the action against him, after obtaining formal leave of court.
- g) the previous Counsel for the applicant made an oral uncontested application on the 1st of October, 2018 to this court for leave to amend and remove Yuda Kitaka as a party on allegations that they had found out that he had long died.
- h) on the 26th of October, 2018, the applicant filed the 2nd amended plaint with Salongo Ssenyange, Ssemukuye and Commissioner Land Registration as defendants.
- i) 2^{gth} Februar 5^r, 2022, the applicant through her new lawyers filed the 3^d amended plaint with Salongo Ssenyange, Yuda Kita-ka, Mutebi Ronald and the Commissioner Land Registration as defendants.

$$\mathcal{L} = \mathcal{L} \cup \mathcal{L} \quad \text{---} \quad \mathbf{x} = \begin{bmatrix} \mathbf{x} & \mathbf{x} \\ \mathbf{y} & \mathbf{y} \end{bmatrix}$$

- j) That claiming the removal and adding of parties was an oversight is being deceitful to this honourable court.
- 4. The issues to be decided by court are;
 - a) Whether the affidavit in reply sworn advocate of the respondents should be struck off the court record-
 - b) Whether the applicant should be granted leave to amend the plaint as prayed.
- 5. Both parties filed written submissions which I have carefully studied together with the pleadings and record of proceedings
 - a) In his submissions counsel for the applicant raised a preliminary objection to the effect that the affidavit in reply filed on behalf of the Respondents is defective for want of authority and that the same should be struck off court's record so that the application remains uncontested. He called upon court to be guided by decision of court in the case of *Sophie Ndagire v. Kibinge Ahmed HCMA No. 1876 of 2017* where it was held that u...where ^a deponent swears an affidavit on behalf of another, he or she must shout that he had authority to swear the affidavit on their behalf... that since Mukasa Charles, the advocate, had no authority to swear an affidavit on behalf of the 1st and 2nd Respondent, the affidavit should be struck off.

Further that Order 10 rule 2 of the Civil Procedure Rules allows court at any stage of the proceedings to add or strike

$\mathbf{z} = -\mathbf{z}$ $\mathbf{x} = \begin{bmatrix} \mathbf{x} \\ \mathbf{x} \end{bmatrix}$ out a party as a plaintiff or defendant where necessary. He reiterated the facts laid out in the applicant's affidavit in support of the application and prayed for leave of court to have Rose Kitaka, the administrator of Yuda Kitaka's estate to be added to the suit.

b) Counsel for the respondents on the other hand submitted that he swore the affidavit in reply in his capacity as the advocate in personal conduct of the case. That court should be persuaded by the decision of court in the case of *Electro-mar. Uganda Ltd v. Oryx Oil Uganda Ltd*, HCMA No. 251 of 2020 wherein the trial judge stated "it is clear to me that deposing to an affidavit is one of the acts authorized by law that can be done either by the party themselves or by a recognized agent or by an advocate. Just like a party appearing themselves, there is no requirement for a recognized agent or court advocate to furnish proof of authority to plead on behalf of their principal."

He further submitted that the plaint on the court record in the main suit should be rejected for containing a non-existent party, Yuda Kitaka - a deceased person. He relied on the case of *MM Sheik Dawood v. VG Keshwala & Sons* HCCA No. 39 of 2014 in which Justice Christopher Madrama held that pleadings preferred against a non-existent party are incurably defective and cannot be allowed to remain in the judicial process. Counsel also cited the cases of *The Trustees*

$\mathbf{a} = \mathbf{a}$ $\mathbf{v} = \frac{1}{\sqrt{2}} \mathbf{v}$ of *Rubaga Miracle Centre v. Mulangira Ssimbwa* HCMA No. 576 of 2016 and *Mulangira Ssimbwa AKA Afidra Milton v. The Board of Trustees; Miracle Centre and Pastor Robert Kayanja* HCMA No. 655 of 2005 where Justice Remmy Kasule held that where the amendment by way of substitution of a party purports to replace a party that has no legal existence, the plaint must be rejected as it is no plaint at all. He therefore prayed that on the basis of these authorities, court should not only dismiss the application, but the suit as well.

Lastly, that this was the 4th Application to amend the plaint and introduce parties that had previously been removed with leave of court and that court should intervene and bring an end to the mess being occasioned on the court record.

6. Decision of court

Issue 1:

Whether the affidavit in reply sworn by advocate of the respondent should be struck off the court record.

After carefully studying the record of pleadings and submission of parties I have noted as follows. It is true the affidavit in reply in this matter was sworn by an advocate in personal conduct of the case. It has already been settled in by the supreme court in the case of *Mbarara Municipal Council v. Jetha Brothers Ltd*, Supreme Court Miscellaneous Application No. 10 of 2021, where it was held that;

x^6

$\begin{array}{cc} 2 & \cdot 2 \end{array}$

$\mathbf{x} = \frac{2}{\sqrt{2}}$

"... Affidavits can be sworn by anyone to prove a set of facts, and an advocate is not an exception. An advocate is therefore not prohibited to swear an affidavit where necessary especially on matters that are well within his/her knowledge."

In the instant case, Mr. Mukasa Charles swore the affidavit in reply as counsel in personal conduct of the matter, having full knowledge of the proceedings and what had happened in court, since the suit was filed in this court and the subsequent applications that arose therefrom.

It was therefore not necessary for him to obtain authority from the st and nd Respondents since he had clear knowledge of all facts pertaining to this case. For that reason the affidavit in reply can not be struck off and I hereby resolve the st issue in the negative.

\$\$

Whether the applicant should be granted leave to amend the plaint as prayed.

Order 1 rule 10 (2) of the Civil Procedure Rules provides;

"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 to enable

$\mathcal{F} = \mathcal{F} \cup \{0,1\}$ $\mathbf{x} = \frac{1}{\mathbf{x}}$

the court is fully and completely to adjudicate upon and settle all questions involved in the suit, be added.'

I must note that this application was supported by affidavit evidence. In paragraph 3 of her affidavit in support of this application, the applicant stated she found out that Yuda Kitaka had died and had an administrator called Rose Kitaka when she received certified copies of documents from the Commissioner Land Registration on 17th February 2022. However, a perusal of the court record shows that on the 1st of October, 2018, Mr. Kajeke counsel for the applicant then informed court that he had learnt that the 3rd defendant, Yuda Kitaka was deceased and he then made an oral application for leave to amend and have him removed from the plaint which leave was granted. It is therefore not true that the applicant learnt about the death of Yuda Kitaka in 2022 as she claimed in her affidavit in support. I find that the affidavit in support of the application was full of falsehoods and cannot be relied upon. In the case of *Eric Tibebaga v. Fr. Narsensio Begumisa & Ors.* Civil Application No. 18 of 2002 it was held that an affidavit riddled

with falsehoods cannot support an application before court.

I also note that Yuda Kitaka was added to this case in 201a by way of amendment. However, the record shows that letters of administration to his estate were granted way back on 12th July 2012, meaning that at the time the case was filed against him he was already dead and there was already an administrator. It was therefore erroneous to file a suit against the deceased

person. The suit against him was thus a nullity and court cannot allow the applicant to amend the plaint to rectify a nullity.

I further note that the plaintiff filed this case way back in 2017. Since then, the plaintiff has amended the plaint four times by way of adding and removing parties. Whereas the law allows parties to amend pleadings at any stage, there should be a limit as to the number of times a party can be allowed to amend so that the case can proceed. In my view, endless amendments do not only occasion a miscarriage of justice to the other parties who are constantly required to respond, but would also be tantamount to an abuse of court process. The plaint in this case has been amended several times and there are four plaints on record as follows;

Date of filing	Plaintiff	Defendant(s)
1st/2017	Nakamatte Namusisi	Salongo Senyange
2nd/2018	Nakamatte Namusisi	Salongo Senyange
3rd/2018	Nakamatte Namusisi	Salongo Senyange
4th/2018	Nakamatte Namusisi	Salongo Senyange

D+

Date of filing	Plaintiff	Defendant(s)
4th/2020	Nakamatte Namusisi	Salongo Senyange
5th/2020	Nakamatte Namusisi	Salongo Senyange
6th/2020	Nakamatte Namusisi	Salongo Senyange
7th/2020	Nakamatte Namusisi	Salongo Senyange

It is not even clear why and how the plaintiff filed two plaints with different parties on 2012/2020. Granting yet another application for leave to amend would be an abuse of court process.

For all the reasons advanced above this application hereby fails and is accordingly dismissed with costs to the Respondents.

Dated at Kampala this 1st day of 2023.

FLAVTA NASSIINA MATOVU. Judge. a"-+,-\

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://ulii.org/akn/ug/judgment/ughcld/2023/206/eng@2023-07-13>

CASE PAGE <https://chat.esheria.ai/case-law/uganda/nakamatte-v-sseyange-and-4-others-miscellaneous-application-962-of-2022-2023-ughcld-206-13-july-2023-unknown-topic-unknown-court-2023--6a3ea4dc3b1caa91297e9145>

Prepared on 14 October 2026 · Esheria