

UGANDA / JUDGMENT

Nakayondo & Another v Namagambe (Miscellaneous Application 1 of 2024) [2024] UGHC 1196 (23 January 2024) [2024] UGHC 1196

COURT
High Court of Uganda

BEFORE
Wolayo, J

CASE / FILE NUMBER
Miscellaneous Application 1 of 2024

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THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT LUWERO HCT-1 7-FD-M A-0001 - 2024

(Arising from HCT-1 7-FD-CS-0049 - 20231

1. NAKAYONDO MILLY

2. MUSOKE GODFREY(deceased) now substituted by Namaganda Gladys Kikaziki)
"..-...."APPLICANTS

VERSUS

NAMUGAMBE FAISI..... ... RESPONDENT BEFORE LADY JUSTICE HENRIETTA WOLAYO RULING

Introduction

- ¹. By a notice of motion daled 13.2.2024,|he applicants moved court under Section 98 Of the civil Procedure Act, and order 1 rules 10, 13 and order 6 rules 19 and 31 and order 52 r 1 and 3 0f the civil Procedure Rules for orders that;
- a) Kamya Sekamwa, Semugabi James' Luwaga John and commissioner Land Registration be added as defendants in civil Suit No. 49 of 2023.
- b) The second applicant tvlusoke Godfrey be removed and replaced by Namaganda Gladys Kikaziki as the second plaintiff.
- c) Leave be granted to amend the plaint in Civil Suit No. 49 of 2023

- d) Costs of this application be in the cause'
- 2. The grounds in support of this application are contained in the affidavit of Nakayondo Milly, the first applicant. The respondent filed her affidavit in reply. The first applicant did not file his affidavit in rejoinder.
- 3. When the main suit came up for hearing on 28.2.2024 counsel for the applicant appraised the court of the instant application. counsel for the respondent informed the court that, save for the grounds that the application seeks to introduce a new cause of action and to incorporate averments which have already been pleaded in the counter claim by the defendant, he did not object to the replacement/substitution of the deceased second applicant/plaintiff with Godfrey.
- 4. By an order dated 28.2.2024, I allowed the application to substitute the late Musoke Godfrey (second applicant/plaintiff) with Namaganda Gladys Kikaziki his legal representative. I then directed both counsel to file written submissions in respect of other reliefs or orders sought in the application, along the following schedules; applicants by 13.3.2024, respondent by 27.3.2024 and a rejoinder by 3.4.2024. Both parties complied accordingly.

Back round information

Both applicants being beneficiaries of the estate of the late Mariarereza Nakaddu, sued the respondent Namugambe Faisi the alleged administrator of the said estate in civil suit No. HCT-'17-FD-CS-0049- 2023 for recovery of their beneficial share and title for the suit land measuring 12 acres comprised in Bulemezi Block 366 land at Muganvula. 5

- 6. In her written statement of defence, Namugambe denied being an administrator to the said estate and further denied being part of the intermeddling and distribution of the said estate. In the counter claim, the counter claimant Namugambe claimed the counter defendant Nakayondo Milly and Musoke Godfrey (late) now substituted with Namaganda and counter defendants Semugabi James, Luwagga John and the commissioner Land Registration had committed acts of forgery' fraudulent and unlawful dealings on the suit land to her detriment.
- 7. The second applicant Lukasa Godfrey passed away and on 29.4.2022 the Chief Magistrate Court of Luwero granted letters of administration to I Namaganda Gladys Kikaziki under Administration cause No. 067 of 2022. It is upon these grounds that the first applicant Nakayondo Milly, filed this application
- 8. Agreed Issues
- a. Whether the proposed counter defendants (Kamya Sekamwa, Semugabi James, Luwagga John and the Commissioner Land Registration) should be added to the main suit

- b. whether leave should be granted to the applicant to amend the plaint in Civil Suit No. HCT-17-FD-CS-0049-2023

Resolution of the case

- a. Whether the proposed defendants (Sekwama K'amva: Sebuqabi James: Luwaqa John: and Commissioner Land Registration) should be added to the main suit as defendants
- 9. The import of order 1 Rule 3 of the cPR is that where a claim arises or exists against any person in respect of a transaction, that person may be joined as a defendant and the court may at any stage of the proceedings upon application of either party to the suit or upon such terms as may appear to the court to be just, order that the name of any party be added as a plaintiff or defendant.

Applicants' case

Counsel for the applicant submitted that since Namagembe contends that Kamya Sekamwa, Sebuqabi James and Luwagga John are behind the illegal subdivision and subsequent transfer of the suit land, the said persons together with the commissioner Land Registration be added as defendants to the suit. Furthermore, that for a proper adjudication of the ongoing controversy and avoidance of multiplicity of suits, it is necessary to add the said defendants to the suit and have the plaint amended.

Respondent's case

- 11. Namagembe deposed that she has never been appointed as an administrator of the estate of the late Maria Tereza Nakaddu as alleged by the applicants and that the parties intended to be added are already parties in the counter claim.
- 12. Namagembe further deposed that she did not apportion liability to Kamya Sekamwa for the illegalities committed on the suit land but rather that the applicants connived with the surveyors to retrieve a certificate of

title from Kamya Sekamwa. Furthermore, that the intended amendment is a replica of her defence in the written statement of defence and counter claim, which is an abuse of court process and a move designed to mislead and confuse court.

- 13. Namagembe deposed that the same amendment is prejudicial to the respondent as it seeks to introduce a new cause of action and will cause unnecessary expenditure to her since pleadings have already been filed in respect of the suit.
- 14. Counsel for the respondent submitted that the proposed defendants are already before the court in the respondent/defendant's counter claim as counter defendants, wherein they are sued along with the applicants/plaintiffs and as such, any attempt to add them as defendants in the main suit will deprive the respondent/defendant of her cause of action against the applicants and counter defendants.

- 15. The supreme court in the case of *Departed Asians Property Custodian Board v Jaffer Brothers Ltd* SCCA[1999]UGSC2(27May 1999) held;

"For a person to be joined as a party, it must be shown that the orders sought would legally bind that person and to avoid multiplicity of suits, that person be joined or, that the defendant cannot effectually set up a defence unless that person is joined."

- 16. A careful perusal of the record indicates that besides a one Kamya Sekamwa, the proposed defendants namely; Semugabi James, Luwaga

John and Commissioner Land Registration were sued as counter defendants by the respondent/defendant/counter claimant Namugambe Faisi and the said defendants filed their defence to the counter claim on 25.10.2021 and a reply was filed accordingly.

- 17. Order 8 Rules 8 and 9 of the Civil Procedure Rules permit a counter counterclaimant to add parties as defendants to the title of his or her written statement of defence and counterclaim. The defendant/counter claimant is therefore well within her rights to add parties who were not sued by the plaintiff as long as she believes that having them sued as parties will enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit.
- 18. From the foregoing analysis, there is no legitimate reason to add the proposed defendants; Semugabi James; Luwaga John and Commissioner Land Registration, to Civil Suit No. HCT-17-FD-CS-0049- 2023 owing to the fact that the said persons are already parties to the said suit (counter claim) in their capacity as the third, fourth and fifth counter defendants to the suit and adding the said persons as defendants is redundant.
- 19. On the issue of having a one Kamya Sekamwa added as a defendant, the applicant has not persuaded this court of his relevance to the determination of the main suit. In any case, either party is free to summon the said Kamya as a witness or can ask the court to summon him as a court witness.
- 20. It follows that the application to add the said semugabi James; Luwaga John, Commissioner Land Registration and Kamya Sekamwa as defendants is disallowed for the reason that all except Sekwama are already party to the case as counter -defendants.
- b. Whether leave should be granted to the applicant to amend the plaint in Civil Suit No. HCT-17-FD-CS-0049-2023
- ²¹. The import of order 6 rule 19 of the cPR is that the court has the discretion to allow an amendment at any stage of the trial for the purpose of determining the real issues in controversy between the parties'

Aollicant's submissions

22. Counsel for the applicant submitted that the proposed amendment is in good faith and not likely to occasion injustice on the respondent And that having discovered new facts that certain third parties are liable to the plaintiffs. And that for a holistic determination of the all questions in controversy, the said circumstances warrant an amendment of the plaint.

Respo ndent's submissions

- 23. Counsel for the respondent submitted that the application to amend the plaint is an afterthought after perusing the defendant's written statement of defence and counter claim and moreover, the contents in the intended amendment are already highlighted in the pleadings of the defendant. He prayed for the application to be rejected.
- 24. I am in agreement with the submissions of counsel for the respondent that intended amendment to the plaint is redundant as the allegations of

fraud have already been pleaded by the respondent Namagambe and all the plaintiff has to do was to reply to the counter claim and prepare to prosecute her case. Furthermore, all issues in controversy that the applicant wants to add in their plaint are in the pleadings. The application to amend the plaint is accordingly disallowed.

Orders

- a. I confirm that Kikaziki Namaganda Gladys is substituted as second plaintiff instead of Musoke Godfrey who is deceased.
- b. As for the rest of the relief sought by the applicant, namely to add counter defendants as defendants and to amend the plaint, the same is disallowed.
- c. The applicant Nakayondo Milly shall pay the respondent/defendant Namugambe Faisi costs of this application which should be paid before the next court appearance.

DATED AT LUWERO THIS 23RD DAY OF JANUARY 2024

LADY JUSTICE HENRIETTA WOLAYO

Legal Representation

M/s Mugeru, Kusaasira & Co Advocates for the Applicant

M/s United Advocates for the Respondent

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