

UGANDA / JUDGMENT

National Social Security Fund v Kabuye Ibrahim and Others (Miscellaneous Application No 3331 of 2024) [2025] UGHCLD 54 (9 May 2025) [2025] UGHCLD 54

COURT

HC: Land Division (Uganda)

BEFORE

Naluzze Aisha Batala, J

CASE / FILE NUMBER

Miscellaneous Application No 3331 of 2024

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(LAND DIVISION)

MISCELLANEOUS APPLICATION NO 3331 OF 2024

(ARISING FROM MISCELLANEOUS APPLICATION NO.

2431 OF 2024)

(ALL ARISING FROM CIVIL SUIT NO. 366 OF 2020)

NATIONAL SOCIAL SECURITY FUND ::::::::::: APPLICANT

VERSUS

- 1. KABUYE IBRAHIM
- 2. KITOOKE TONNY
- 3. MATSIKO RAYMOND
- 4. BAMANZI JANUARY
- 5. KAFAERO FAROUQE

- 6. FRANK SHEMMIE KIBUUKA MUSOKE
- 7. FRANCIS SENYOKO
- 8. ROBERT BEMUGISA
- 9. COMMISSIONER LAND REGISTRATION
- 10. THE ATTORNEY GENERAL ::::::::::: RESPONDENTS

BEFORE HON. LADY JUSTICE NALUZZE AISHA BATALA

RULING

Introduction

1. This an application by Notice of Motion brought under Sections 76 (1) and 98 of the Civil Procedure Act Cap 282, Order 44 rules 2,3 & 4 and Order 52 rule 1 of the Civil Procedure Rules S. I.71-1 for orders that;
 - i) The Applicant be granted leave to appeal against the ruling and order of this Honorable Court dated 3rd December 2024 in Miscellaneous Application No. 2431 of 2024.
 - ii) That HCCS N0. 366 of 2020 be stayed pending disposal of this Application.
 - iii) Costs of this Application be provided for.

Applicant's evidence

- 2. The grounds of the Application are contained in the Application and supporting Affidavit of the Applicant sworn by Rachel Nsenge, the Litigation Manager of the Applicant in which she briefly stated that;
 - i) That vide a ruling delivered on 3rd December 2024, the Court granted leave to the 9th Respondent to amend its Witten Statement of Defense filed on 28th October 2020 in the manner proposed in draft which was presented to court in its application.
 - ii) That the draft amended Written Statement of Defense does not reflect an amendment but a substitution of the Written Statement of Defense with an entirely different one.
 - iii) That granting leave to the Respondent to amend its defense in that manner offends principles upon which leave is granted to amend pleadings.
 - iv) That the Applicant is aggrieved by the ruling and orders by this Court and with leave of court, it intends to appeal to the court of Appeal of Uganda.
 - v) That the Applicant has plausible grounds of appeal against the ruling in Miscellaneous Application No. 2431 of 2024 with a high likelihood of success.

- vi) That the ruling raises serious questions of law of general public importance in regard to amendment of pleadings.
- vii) That it is a procedural requirement that the Application for leave to appeal first be made to the court which granted the order sought to be appealed against.
- viii) That it is in the interest of justice that this Application is granted to enable the Applicant duly lodge its Appeal.

4th Respondent's Evidence;

- 3. The 4th Respondent filed his Affidavit in Reply in which he stated;
- i) That he was informed by his lawyers that the application was brought in abuse of the court process and there is no ground whatsoever for granting the orders sought by the Applicant.
- ii) That the Applicant is a defendant in this case, and it is not in the interest of justice that this Application be granted.
- iii) That in specific reply to paragraph 3 of the Applicant's Affidavit, the 8th defendant did indicate that its Written Statement of Defence was without prejudice to its rights which include the right to amend the Defence.
- iv) That it is and the 4th Respondent was informed that the Written Statement of Defence was initially filed without prejudice and without a detailed investigation and further investigations have since revealed new facts that warranted an amendment of the Defence of the 9th Respondent.
- v) That the investigations conducted by the Ag Commissioner for land Registration were done in good

faith and involved other government stakeholders to ensure accuracy and transparency in the matter.

- vi) That the new findings necessitated an amendment of the Written Statement of Defence to ensure that the latest information was before this Honorable Court.
- vii) That the 1st to the 8th Respondent have in no way colluded with the 9th Respondent and the Applicant should use this opportunity to prove these facts instead of wasting court's time.
- viii) That the decision made by the 9th Respondent concerning the suit land was based on updated findings that differed from the earlier position which make it imperative that the amended Written Statement of Defence reflects the true state of affairs.
- ix) That the amendments sought were essential to enable this Honorable Court to effectively and conclusively determine the real questions in controversy.

- x) That this Application for leave to appeal is a mere delay tactic intended to frustrate the determination of the suit on its merits.
- xi) That this application should be dismissed as it lacks merit and does not raise any serious legal questions

warranting appellate review.

9 th Respondent's Affidavit in Reply

- 4. The 9th Respondent filed its Affidavit in Reply which was sworn by Ssekabira Moses, the 9th Respondent's Registrar of Titles in which he stated;
- i) That the Applicant and the 9th Respondents are both Defendants in Civil Suit No. 366 of 2020 and the 1st to 8th Respondents who are the Plaintiffs in the main suit do not object to the amendment.
- ii) That this Application does not disclose grounds upon which the leave to appeal ought to be premised.
- iii) That the Applicant does not stand a chance of succeeding on appeal because of the wealth of the decisions made in this court and Court Appeal to the effect that amendments made at an early stage of the case ought to be freely allowed.
- iv) That the Applicant seems to agree with the amendment but are complaining about the manner of the amendment and this is not ground for appeal.
- v) That the 2nd to the 8th Respondents did not object to the amendment of the Written Statement of Defence. Moreover, the ruling in Miscellaneous Application No.

2431 of 2024 does not affect the Applicant's rights in any material way as the Applicant retains the ability to challenge the amended Written Statement of Defence as evidence at the appropriate time.

vi) That this Application does not raise any serious questions of law of general public importance in regard to amendment of pleadings.

Applicant's Affidavit in Rejoinder;

- 5. Rachel Nsenge the Litigation Officer of the Applicant replied to both the 4th and 9th Respondent's Affidavits and stated that;
- i) In reply of Moses Ssekabira's Affidavit, the amendment was sought belatedly and is a clear after thought intended to sanitize the fraudulent scheme of the 1st to the 9th Respondents.

- ii) That in Reply to the Affidavit sworn by Mr. Bamanzi January and Mr. Moses Ssekabira, the purported new findings refereed to are part of the fraudulent machinations by the current holder of the office of the Commissioner Land Registration in cohort with the 1st to 8th Respondents aimed at grabbing the Applicant's land.
- iii) That the purported new findings were partly based on a Criminal Court Judgement and proceedings in Makindye Chief Magistrates Court Criminal Case No. 1524 of 2023, Uganda Vs Lubowa Mohammed and others which judgement has since been set aside vide High Court Criminal Appeal No. 38 of 2024, Uganda vs Lubowa Mohammed and Others with the earlier acquittal of the accused reversed by court and a finding made that they had a case to answer in respect of the offence of fraudulent acquisition of Title contrary to section 190 (1) of the Registration of Titles Act (now Section 174 (1) of the Registration of Titles Act).
- iv) That the Learned Trial Judge erroneously granted an order wherein existing precedents on amendments were over looked resulting in an order granting leave to the 9th Respondent to amend its defense in a manner which amounts to a complete departure from its Defence on record.

Representation;

6. The applicant was represented by M/S Nangwala, Rezida & Co. Advocates whereas the 1st – 8th respondents were represented by M/S Bazirengende & Co Advocates. The

Applicant, the 4th and 9th Respondents have all filed written submissions that have been relied on in this ruling.

Issue for determination;

Whether there are sufficient grounds to grant the applicant leave to appeal?

Resolution and Determination of the grounds;

7. The right to appeal is a creature of Statute as enunciated in the case of **Shah V. Attorney General (1971) EA 50**. Where there is no automatic right of appeal, a party must seek leave of court to do so.
8. Order 44 rules 1 (2), (3) and (4) of the Civil Procedure Rules set out which Orders are appealable as of right to this Court.
9. The applicant in this case does not have an automatic right of appeal and therefore has to seek leave of court from the court which made the ruling.
10. The applicant in its application for leave attached a draft memorandum of appeal with the following grounds;
 - i) That the learned Trial Judge erred in law and fact when she rendered a decision that directly contravenes the principles that govern the amendment of pleadings.

ii) The learned trial Judge erred in law and fact when she condoned the perpetration of an illegality through the grant of an order that implicitly allows the 9th respondent to replace its written statement of defense with a fresh written statement of defense.

iii) That the learned trial Judge erred in law and fact when she erroneously allowed an amendment that is prejudicial to the Appellant.

11. In the case of **Degeya Trading Stores (U) Ltd. V. Uganda Revenue Authority, Court of Appeal Civil Application No. 16 of 1996**, their Lordships observed that, *"An applicant seeking leave to appeal must show either that his intended appeal has reasonable chances of success or that he has arguable grounds of appeal and has not been guilty of dilatory conduct"*
12. The gist of the Applicant's case is that the leave granted to the 9th Respondent to amend its defence wherein the 9th Respondent introduced a new and inconsistent line of defence, divergent from its original pleadings contravenes the established legal principles governing the amendment of pleadings and occasions prejudice to the Applicant.
13. In the case of **Sango Bay Estates Ltd & Ors Vs Dresdner Bank A. G (1972) EA 17**, it was held that the applicant must prove the existence of prima facie grounds of appeal which merit serious consideration.
14. In my considered view, and upon examination of the proposed grounds of appeal, I am persuaded that the said grounds warrant serious consideration by the Court of Appeal, particularly in relation to the propriety and extent of the amendments effected to the 9th Respondent's defence.
15. In the premises, the application succeeds and leave to appeal is hereby granted with no orders as to costs.

I SO ORDER.

NALUZZE AISHA BATALA Ag. JUDGE. 09/05/2025 Delivered Electronically via ECCMIS on the 09th of May 2025.

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