

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
LAND DIVISION
MISCELLANEOUS APPLICATION NO. 518 OF 2007 AND 921 OF 2012
Arising out of Civil Suit No. 269 of 2011

KAYANJA KEVAS GASUZA.....APPLICANT

VERSUS

- 1. Ntwatwa Ronald**
- 2. KISAWUZI ROBERT**
- 3. KABANDA CHARLES (Administrators of the estate of the late Kefasi Yawe).....RESPONDENTS**

BEFORE HON. LADY JUSTICE PERCY NIGHT TUHAISE

RULING

This was an application by Notice of Motion brought under Order 1 rules 3 & 10 of the Civil Procedure Rules (CPR) and section 98 of the Civil Procedure Act (CPA) for orders that:-

- (a) The applicant be joined as a party to HCCS No. 269 of 2011 as a defendant to enable him defend his ownership of the suit land comprised in Kyadondo Block 221 Plot 110 situate at Nalyako.
- (b) Costs of this application be provided for by the respondents.

The application is supported by the affidavit of **Kayanja Kevas Gasuza** the applicant and is based on the grounds that:-

1. The applicant is the son of **Kevas Yawe** who was the registered proprietor of the above mentioned land.
2. The respondents are the applicant's brothers who tried to apply for a special certificate of title of the suit land well aware that the applicant has got possession of the owner's title with him.
3. That when the Commissioner for Lands refused to issue them with the special certificate of title they decided to sue him and the Attorney General. They ought to have sued the applicant who has got possession of the suit title which he bought from the late Kevas Yawe.

4. The applicant will be deprived of his interest as the owner of the suit land if he is not given an opportunity to be heard in the main suit in which he intends to file a counterclaim against the respondents.
5. That in the interests of justice, the applicant ought to be joined as a defendant to the main suit to defend his ownership of the suit land.

The respondents did not file any affidavit in reply though the court record indicates that they were served. There is an affidavit of service to that effect with a copy of the application as endorsed by the respondent's Counsel. The matter therefore proceeded *ex parte*.

In his submissions, learned Counsel for the applicant, Sulaiman Musoke, relied on the evidence as deponed to in the affidavit in support by **Kayanja Kevas Gasuza**. The facts as brought out in the said affidavit are generally reflected in the grounds of the application highlighted above. The applicant's Counsel submitted that the respondents ought to have added the applicant as co defendant to the main suit, and that their conduct in omitting to do so is prejudicial to the applicant's interest in the suit property. He contended that the applicant ought to be allowed to be joined as defendant to defend his interests, and that he also intends to file a counterclaim because the defendants are administrators of Kayanja's property. He prayed court to grant the application so that all matters surrounding the suit can be adjudicated upon by court. He also contended that since there was no affidavit in reply to the application, the evidence adduced by the applicant is the truth as it is not challenged.

I have looked at the application and its supporting affidavit, including the pleadings in civil suit no. 269 of 2012. I have also analysed the submissions of Counsel and the law applicable to the situation. The facts as adduced in the applicant's affidavit evidence have not been challenged by the respondents who did not file any affidavit in reply. On the authority of **Samwiri Masa V Rose Achieng [1978] HCB 297** the facts as adduced in the affidavit of the applicant which are neither denied nor rebutted are presumed to be admitted.

Order 1 rule 3 of the CPR provides as follows:-

“All persons may be joined as defendants against 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 separate suits were brought against those persons, any common questions of law or fact would arise.”

Order 1 rule 10 of the CPR also allows court to add a party to a suit if it is satisfied that, among other things, it is necessary for the determination of the real matter in dispute.

In my opinion, since the applicant claims an interest in Kyadondo Block 221 Plot 110 at Nalyako by virtue of holding the owner's certificate of title, which suit land is the subject matter of civil suit no. 269 of 2011 where the respondents are seeking to be issued with a special certificate of

title, it is necessary that the applicant be joined as a co defendant in civil suit no. 269 of 2011. This will ensure that all questions arising out of the dispute are resolved at once.

In the premises, and on the foregoing authorities, I find that the applicant has satisfied his claim against all the respondents. I allow the application and grant the following orders as prayed by the applicant:-

- (i) The applicant be joined as a party to HCCS No. 269 of 2011 as a defendant to enable him defend his ownership of the suit land comprised in Kyadondo Block 221 Plot 110 situate at Nalyako.
- (ii) Costs of this application will abide in the main suit.

Dated at Kampala this 6th day of December 2012.

Percy Night Tuhaise.

JUDGE.