



IN THE HIGH COURT OF UGANDA SITTING AT GULU

Reportable
Civil Application No. 0129 of 2018

In the matter between

ATIM BETTY

APPELLANT

And

**GEORGE OKENY BITEK (Administrator
of the late JUSTINO OKENY BITEK**

RESPONDENT

Heard: 23 June, 2020.

Delivered: 23 July, 2020.

***Civil Procedure** — Joinder of parties— order 1 rule 10 (2) of The Civil Procedure Rules — Court has discretion to order anyone to be joined as a plaintiff, whose presence before court may be necessary in order to enable court to effectively and completely adjudicate upon and settle all questions involved in the suit. — Order 1 rule 1 of The Civil Procedure Rules. — all persons may be joined in one suit as plaintiffs in 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 those persons brought separate suits, any common question of law or fact would arise. Read together, both parts of the rule indicate that the question of joinder of parties also involves the joinder of causes of action. — The simple principle is that a person is made a party in a suit because there is a cause of action in his or her favour or against him or her and when causes of action are joined, the parties are also joined*

RULING

STEPHEN MUBIRU, J.

Introduction:

[1] This is an application under the provisions of section 33 of *The Judicature Act*, sections 64 (e) and 98 of *The Civil procedure Act*, Order 1 rules 10 (2) and Order 52 rules 1 and 3 of *The Civil Procedure Rules*, seeking the joinder of 401 (four hundred and one) persons as plaintiffs in the underlying suit. The application is premised on grounds that the applicants assert a right to similar relief jointly, severally, or in the alternative with respect to or arising out of the same subject matter and questions of law or fact common to all of them together with the pre-existing plaintiffs will arise in the suit. The respondent never filed an affidavit in reply.

[2] It is submitted by counsel for the applicants, that Order 1 rules 10 (2) of *The Civil Procedure Rules*, authorizes the court to make orders of this nature where it is apparent that common questions of law or fact exist between the existing parties and those sought to be joined such that joinder will not only avoid a multiplicity of suits but also enable the court to effectually and completely adjudicate upon and settle all questions involved in the suit. The current application was prompted by the testimony of P.W.1 whereupon it became apparent that the land in dispute is claimed by members of three different clans and the current plaintiffs are not representative of the three clans. The applicants are all members of the three clans residing on the land in dispute.

Joinder of parties.

[3] Under Order 1 rule 1 of *The Civil Procedure Rules*, all persons may be joined in one suit as plaintiffs in 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 those persons brought separate suits, any common question of law or fact would arise. Read together, both parts of the rule indicate that the question of joinder of parties also involves the joinder of causes of action. The simple principle is that a person is made a

party in a suit because there is a cause of action in his or her favour or against him or her and when causes of action are joined, the parties are also joined. Moreover under Order 1 rule 10 (2) of *The Civil Procedure Rules* the Court has discretion to order anyone to be joined as a plaintiff, whose presence before court may be necessary in order to enable court to effectively and completely adjudicate upon and settle all questions involved in the suit. The application ought to be allowed if thereby a multiplicity of proceedings will be avoided.

[4] The applicants herein all claim to members of the Kal Clan and in occupation of the land in dispute that forms the subject matter of the underlying suit. It is quite obvious in this case that the common questions of fact which would arise on the filing of separate suits would be those relating to their respective rights of occupancy and user of the land. It follows that if the applicants brought separate suits, common questions of law or fact would arise. The applicants therefore have a common interest in the same subject-matter and in the same relief. For that reason the application is allowed.

Order:

[5] In the final result, Leave is accordingly granted to the applicants to be joined as plaintiffs to High Court Civil Suit No. 055 of 2011 now pending before this court. The applicants are to file and serve an amended plaint within fourteen days from the delivery of this ruling. The costs of the application shall abide the results of the suit.

Delivered electronically this 23rd day of July, 2020

.....Stephen Mubiru.....

Stephen Mubiru

Resident Judge, Gulu

Appearances

For the applicants : M/s Okello-Oryem and Co. Advocates

For the respondent :