

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(LAND DIVISION)
MISCELLANEOUS APPLICATION NO. 0178/2024
(Arising Out of Civil Suit No. 2285 of 2016)
(Formerly Civil Suit No. 189 of 2011 High Court at
Nakawa)

CANAANSITES EDUCATIONAL SERVICES LIMITED:: APPLICANT
VERSUS
KOKO INVESTMENTS LIMITED :::::::::::::::RESPONDENT

BEFORE HON: LADY JUSTICE KANYANGE SUSAN

RULING

The Applicant brought this Application through Notice of Motion under **Section 33 of the Judicature Act, Cap. 16, Section 98 of the Civil Procedure Act, Cap. 282, Order 1 Rules 3 and 13, Order 6 Rules 19 and 31 of the Civil Procedure Rules S.I. 71-1** seeking for orders that;

1. The Registrar of Titles and Mugaino Baker, Ag. Commissioner Land Registration be joined as Defendants in HCCS No. 2285 of 2016.

2. Leave be granted to amend the Plaintiff in HCCS No. 2285 of 2016.



3. Leave be granted to the Plaintiff/Applicant to reopen its case and be allowed to tender all its evidence and call necessary witnesses in HCCS No. 2285 of 2016.
4. The Honourable Court makes such consequential orders as it thinks just and fair.
5. The Respondent pay the Costs of this Application.

The Grounds of this Application are well expounded in the Affidavit in Support of the Application sworn by Sam Wabasa, but briefly they are; -

1. The Applicant filed HCCS No. 2285 of 2016 at High Court Nakawa (for Order of Vacant Possession of Land comprised in LRV 4180 Folio 21 measuring approximately 0.541 Hectares) registered in the names of the Applicant. The matter was later transferred to the High Court Land Division and assigned Civil Suit No. 2285 of 2016.
2. That Mugaino Baker, who initially deponed a witness statement on behalf of the Respondent in the suit as an Advocate working with Uganda Land Commission, was later appointed as the Acting Commissioner Registrar of

Titles and subsequently amended the Register Book, cancelling the Applicant's Certificate of Title of the suit land.

3. That the subject matter of the suit has been altered/changed by the unjustified, unreasonable, and unconscionable actions of Mugaino Baker, now the acting Commissioner Registrar of Titles and a witness in HCCS No. 2285 of 2016.
4. The action of the proposed Defendants has altered the status of the Suit Land, and it is necessary to plead fraud and conflict of interest to determine all matters in controversy.
5. The presence of Mugaino Baker and the Commissioner Land Registration as parties is necessary to enable the Court to effectively and completely adjudicate and settle all questions in the suit and avoid multiplicity of suits.
6. The addition of Mugaino Baker and the Commissioner Land Registration as Defendants stems from their pivotal involvement in altering the Register Book and cancelling the Applicant's Title, significantly altering the nature of the suit.

7. These pertinent facts that the Applicant obtained arose after the filing of the suit and materially affected the reliefs sought by the Applicant, thereby allowing the amendment of the plaint to be acted upon.
8. The circumstances demand the reopening of the Applicant's case to allow it to present crucial evidence following the unfair cancellation of its Certificate of Title without following due process.
9. It is just and equitable that the Court allows this Application for the purpose of determining all matters in controversy.

In an Affidavit in Reply sworn by Amina Hersi Moghe, the Director of the Respondent Company, he averred as follows;

1. The Plaintiff's Suit was closed, and the Defence opened its case. He stated that he was led a Defence Witness number one (DW1), and the Applicant objected to the exhibits he was referring to.

The Plaintiff's contention was with respect to DEX1 and DEX2, and both parties had agreed to the documents.



It was surprising for the Applicant to come up with an objection to documents that they had agreed to initially.

2. In light of the Plaintiff's Objection, this Court, on 7th September 2020 issued orders which inter alia tasked the Uganda Land Commission to avail to Court Certified Copies of the record relating to the history of the suit land. On 30th November 2020, this same Court issued orders directing the Commissioner for Land Registration to issue Certified Copies of the Titles in the name of the Defendant in respect of the Suit Land comprised in Kibuga Block 28 Plot 136 (LRV 3936/Folio 7).

3. The Uganda Land Commission and the Commissioner for Land Registration produced the documents specified in the court orders. All the certified copies of the said records were forwarded to this Court. Having produced the documents as requested, the defendant is ready for trial.

4. The documents referred to in the respective court orders do not disclose anything fresh/new. The white page, certified by the Lands Office and the Land Title for the



Defendant, shows that the Land is registered in the Defendant's name.

5. The search letter issued by the Lands Office dated 24th October 2022 further corroborates the fact that the suit land is registered in the defendant's name.
6. The records from the Uganda Land Commission relate to the records of the lands office. The lease offer, extensions, and correspondence to and from the Uganda Land Commission all relate to and support the Defendant's Title.
7. That Uganda Land Commission issued a letter dated 16th June 2011 addressed to the Commissioner for Land Registration, and that letter was marked DEX11 with the Applicant's consent. The Title which was issued to the Defendant originates from DEX 11. The Titles for the Applicant that which Uganda Land Commission requested for cancellation in DEX 11 are the very titles which the Applicant tendered in this (Refer to PEX2 a, b and c)
8. That how the Applicant's Titles were issued was pleaded and proved before this Court. The Defence still has the

onus to prove how DEX 11 arose and the history of the Land Title leading to the Title, which was issued and certified by the Lands office.

9. The Defence's proof will come out during its evidence, and the Applicant will have the right to cross-examine the Defence on each document. The Defence will call the Registrar of Land Titles to prove its case, and the same witness will be available for cross-examination. Mugaino Baker, the Commissioner for Land Registration, is one of the witnesses the Defence will lead to prove its case.

10. In the interest of justice, the instant Application ought to be denied.

Legal Representation

Omongole & Co. Advocates, together with **M.D.G. Law Advocates**, represented the Applicant, while **Muganwa, Nanteza & Co. Advocates** represented the Respondent.

Determination of Court

This Court will determine the merits of this Application on three main issues; -



1. Whether the Registrar of Titles and Mugaino Baker, Ag Commissioner Land Registration should be joined as Defendants in HCCS No. 2285 of 2016?
2. Whether Leave should be granted to the Applicant to amend the Plaintiff in HCCS No. 2285 of 2016?
3. Whether the Applicant should be granted leave to reopen its case in High Court Civil Suit No. 2285 of 2016?

ISSUE 1: Whether the Registrar of Titles and Mugaino Baker should be joined as Defendants in HCCS No. 2285 of 2016?

Order 1 Rule 3 of the Civil Procedure Rules S.I. 71-1 provides that,

"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, separate suits were brought against those persons, any common questions of law or fact would arise."

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



"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 the Court effectually and completely to adjudicate upon and settle all questions involved in the suit, be added."

Under Order 1 Rule 10 (2) (Supra), not only can the parties avail themselves of the provisions of the Rule, but the Court itself can, on its motion, join any party as Plaintiff or Defendant if in the Court's opinion such Joinder would facilitate effectively and completely the determination of the suit. See: ***Kololo Curing Co. Ltd Vs West Mengo Co-op Union Ltd, [1981] H.C.B. 60***).

The purpose of the joinder of parties is to enable the Court to effectually and completely deal with the matters in controversy and avoid multiplicity of proceedings. See: ***Samson Sempasa Vs P.K Sengendo, HCMA No. 577/2013***) Adding or striking off a party to pleadings, whether on Application of the parties or the Court's motion, is at the discretion of the Court. Like all discretion, however, it must

be exercised judiciously based on sound principles. See: ***Yahaya Kariisa Vs Attorney General & Anor, SCCA No. 7/1994***)

In ***Deported Asians Property Custodian Board Vs Jaffer Brothers Ltd [1999] 1 E.A. 55, the Supreme Court laid down considerations before a person can be joined as a party; -***

"For a party to be joined on the ground that their presence is necessary for the effective and complete settlement of all questions involved in the suit, it is necessary to show either that the orders sought would legally affect the interest of that person and that it is desirable to have that person joined to avoid multiplicity of suits, or that that person could not effectually set up a desired defence unless that person was joined or an order made that would bind that other person."

See also: ***Gokaldas Laximidas Tanna VS Store Rose Muyinza, HCCS No. 7076/1987 [1990-1991] KALR 21***).

In the instant Application, the Applicant sought to join the Registrar of Titles and Mugaino Baker, Ag. Commissioner Land Registration as Defendants in High Court Civil Suit No. 2285/2016.

In Paragraph 17 of the Affidavit in support of the Application, the Applicant averred that at the time of the suit and the Court Order dated 2nd May 2012 (the Court issued a

Temporary Injunction from High Court Central Nakawa to maintain the status quo), the Land was registered in the name of the Applicant. A Copy of a Witness Statement sworn by the Commissioner of Land Registration, Ms. Sarah Kulata Basangwa) in paragraphs 4 and 6 confirms that as of 27th March 2013, the Suit land was registered to Canaanites Education Services as Proprietor for a lease period of 49 years without any encumbrances and search reports dated 27th February 2013.

In paragraph 18 of the Applicant's Affidavit in support of this Application, it was averred that Mr. Baker Mugaino authored two (02) letters dated 7th July 2012 and 26th July 2012 on behalf of Uganda Land Commission to the Commissioner Surveys and Mapping requesting them to reinstate the Original Plot and issue a set of certified deed plans to enable them to process a title in favour of the Respondent.

In Paragraph 21, the Applicant averred that in total disregard of the ongoing court case and orders issued by the Court on 4th December 2020, Mr. Baker Mugaino, in his new role as Registrar of Title, issued an amendment order cancelling the Applicant's Title.



It was the Applicant's averment that the subject matter of the suit has been altered/changed by the unjustified actions of Mugaino Baker, who is now the acting Commissioner Registrar of Titles and a witness for the Respondent/Defendant in HCCS No. 2285 of 2016.

Counsel for the Applicant submitted that the addition of Mugaino Baker and Commissioner Land Registration as Defendants stems from their fraudulent involvement in altering the Register Book and cancellation of the Applicant's Title, significantly altering the nature of the suit. All these actions were done during the pendency of HCCS No. 2285 of 2016. To support this submission, Counsel for the Applicant relied on paragraphs 17, 20 and 21 of the Affidavit in Support of the Application and the case of ***Naguja Sylvia Lutta VS Commissioner Land Registration and Kabira Aisha, MA No, 227/2012***, arguing that it is in the interest of justice that all matters concerning the subject matter be determined effectively to avoid multiplicity of suits.

Paragraph 35 of the Respondent's Affidavit in Reply averred that the Applicant's intention to sue its witnesses is highly prejudicial to the Respondent's Defence. Counsel for the Respondent submitted that Mugaino Baker is a witness of the Respondent/Defendant, and being a witness puts

Mugaino in the arena of both the Applicant and the Respondent to examine as to aspects stated in his Affidavit Evidence. It also puts Mugaino Baker to cross-examination on issues pertaining to fraud.

Under Section 33 of the Judicature Act, Cap 16, the Court has powers to grant remedies so that as far as possible, all matters in controversy between the parties are completely and finally determined, and all multiplicities of legal proceedings concerning any of the matters are avoided.

The Applicant's Affidavit in Support of the Application unfolds allegations of actions committed by Mugaino Baker.

In paragraph 23 of the Applicant's Affidavit, the Applicant averred that the Applicant's Title was cancelled despite a Court Order maintaining the status quo and the procedure adopted to cancel the Certificate of Title is tainted with fraud and bias as the Registrar of Titles, who cancelled the Applicant's Certificate of Title is a witness for the Respondent in the main suit that is pending determination.

The de-registration of the Applicant/Plaintiff and, later on Registration of the Respondent/Defendant on the Certificate of Title while HCCS No. 2285/2016 is still ongoing despite the Orders of Court issued on 4th December 2020 to

maintain the status quo raises questions which can only be resolved by this Court if the Registrar of Titles is allowed to set up its Defence.

Therefore, the Court finds that the Registrar of Titles is a necessary party to the effective and complete adjudication of the matters in controversy in HCCS No. 2285 of 2016. The actions leading to the alteration of the Register Book and cancellation of the Applicant's Title during the pendency of the suit necessitates inclusion of the Registrar of Titles as Defendant to avoid multiplicity of suits and ensure all matters in controversy are settled.

It was stated by the applicant, that Mugaino Baker acted in his new role as Registrar of titles. I therefore won't add him on the case in his personal capacity since the Registrar of titles has been added as a party.

ISSUE 2: Whether Leave should be granted to the Applicant to amend the Plaintiff in HCCS No. 2285 of 2016?

Order 6 Rule 19 of the Civil Procedure Rules provides that; -
"The Court may, at any stage of the proceedings, allow either party to alter or amend his or her pleadings in such manner and on such terms as maybe just, and all such amendments

shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties."

Relying on the case of ***Simbamanyo Estates Limited Vs Equity Bank (U) Ltd and 2 Ors, Miscellaneous Application No. 0414 of 2022***, Counsel for the Applicant argued that it is necessary that the Plaint in Civil Suit No. 2285 of 2016 be amended to plead the current status of the suit and include fraud and discrimination as a cause of action and other proposed amendments in order to determine all real questions in controversy.

In Paragraph 23 of the Affidavit in support of the Application, the Applicant averred that there was a need to amend the Plaint as the subject matter of the suit has changed, and proceeding with the hearing of this suit without amendment will render it academic.

Citing the cases of ***Luvutu Paul Kamyia Salongo Vs Mukwaya Joseph & 2 Ors, HCMA No. 514/2012, Pascal Rwakahanda Vs Uganda Posts & Telecommunications Corporation, MA No. 484/2014, Lea Associates Limited Vs Bunga Hill House Limited MA No.384/2008 and Mulwooza & Brothers Ltd Vs N Shah & Co. Ltd SCCA No. 26/2010***, Counsel for the Respondent submitted that

the justice of this case does not favour the grant of this Application since the Applicant's Application will lead to the introduction of a new cause of action and in paragraphs 23 (c) and paragraph 6 of the Applicant's Affidavit in Support of the Application, the Applicant makes express admission that a new cause of action will be introduced in the event this Honourable Court decides to reopen the Plaintiff's case. In such circumstances, such an Application cannot be granted.

During Court Proceedings, the Counsel for the Applicant submitted that the Court made some orders where the Defence was to produce several exhibits like a Certificate of Title and the Applicant/Plaintiff was served with documents; those documents became new documents created, especially the Certificate of Title.

Counsel for the Applicant submitted that some actions had been taken to counter all evidence and exhibits in Court that touched the pleadings especially the cause of action. Defendant acquired Title whereas also the Plaintiff has Title. The Applicant/Plaintiff's Plaint only had injunction, vacant possession, punitive damages, and interest. They have also revealed fraud, so there is a need to prove facts of fraud, especially actions of Commissioner Land Registration, and

that it is essential the Registrar of Titles and Mugaino Baker appear.

The Court of Appeal in **Eastern Bakery - VS- Castelino [1958] 1 EA 461** expounded that:

"It will be sufficient, for purposes of the present case, to say that amendments to pleadings sought before the hearing should be freely allowed, if they can be made without injustice to the other side, and that there is no injustice if the other side can be compensated by costs: Tildesley v. Harper (1) (1878), 10 Ch. D. 393; Clarapede VS Commercial Union Association (2) (1883), 32 W.R. 262. The Court will not refuse to allow an amendment simply because it introduces a new case: Budding v. Murdoch (3) (1875), 1 Ch. D. 42. But there is no power to enable one distinct cause of action to be substituted for another, nor to change, by means of amendment, the subject matter of the suit: MA Shwe Mya VS Maung Po Hnaung (4) (1921), 48 I.A. 214; 48 Cal. 832. The Court will refuse leave to amend where the amendment would change the action into one of a substantially different character: Raleigh VS Goschen (5), [1898] 1 Ch. 73, 81; or where the amendment would prejudice the rights of the opposite party existing at the date of the proposed amendment, e.g. by depriving him of a defence of limitation accrued since the issue of the writ:



Weldon VS Neal (6) (1887), 19 Q.B.D. 394; Hilton VS Sutton Steam Laundry (7), [1946] K.B. 65. The main principle is that an amendment should not be allowed if it causes injustice to the other side. Chitale p. 1313." (**Underlined for emphasis.**)

Mulenga, J.S.C. (as he then was) in ***Mohan Musisi Kiwanuka Vs Asha Chand, SCCA No. 14/2002*** stated that

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"...It is a cardinal principle in our judicial procedure that Courts must, as much as possible, avoid multiplicity of suits. Thus, rules of procedure provide for, and permit where appropriate, joinder of causes of action and consolidation of suits..."

Tsekooko J.S.C. (as he then was), in the case of ***Gasu Transport Services (Bus) Ltd VS Martin Adalla Obene [1990-94] E.A. 88***, stated principles that are recognized as governing the exercise of discretion in allowing amendments as; -

1. The amendment should not work injustice to the other side. An injury which can be compensated by an award of costs is not treated as an injustice.



2. Multiplicity of proceedings should be avoided as far as possible, and all amendments which avoid such multiplicity should be allowed.
3. An application made malafide should not be granted.
4. No amendment should be allowed where it is expressly or impliedly prohibited by law, e.g. limitation of actions.

The primary consideration is that no prejudice is caused to the Respondent. Counsel for the Applicant brought it to the Court's attention that the documents (Certified Copies of the Certificate of Titles in the names of the Defendant in respect of the suit land ordered by the Court in HCCS No. 2285 of 2016 to be produced by the Respondent/Defendant is tainted with fraud and bias purportedly committed by the Registrar of Titles and Mugaino Baker, Ag. Commissioner Land Registration.

Parties are at liberty to amend their pleadings whenever it is appropriate to do so to bring into focus the real issues in controversy for determination by the Court. In considering whether or not to grant an amendment to pleadings, the Court must always be guided by the materiality of the amendment sought, the Rule of audi alteram partem and the

genuineness of the amendment. The Court, in checking surreptitious motives, will always consider the balance of convenience between the parties or take into account the competing rights of the parties to justice. (See: **Ng Chee Weng v Lim Jit Ming Bryan [2012] 1 S.L.R. 45**).

In **Tororo Cement Industries Co. Ltd Vs Frokina International Ltd, SCCA No. 2/2001**, a Plaintiff which discloses a cause of action can be amended to include particulars.

The Civil Procedure Rules do not necessarily bar introducing a new cause of action in an amendment, but what is prohibited is amending a plaintiff to substitute a distinct new cause of action for another. Order 2 Rule 4 (1) of the Civil Procedure Rules allows uniting in the same suit several causes of action against a Defendant or Defendants.

This is intended to promote the disposal of suits and to guard against a multiplicity of suits. See: **Mohan Musisi Kiwanuka Vs Asha Chand, SCCA No. 14/2002**).

Case law seems to prohibit introducing an amendment that would be prejudicial to the other party's case. Even such an amendment will be allowed if costs can sufficiently compensate the prejudice. (**Mulwooza & Brother Vs N. Shah & Co. Ltd, Civil Appeal No. 26/2010**).

The instant Application does not seem malafide to me since the Applicant has not shown any bad intention in bringing the same. The issues of fraud raised by the Applicant in his Affidavit in Support of the Application leaves this Court with no other option than to allow an amendment of the Plaint in HCCS No. 2285/2016 so that the particulars of fraud allegedly committed by Registrar of Titles can be specifically pleaded and proved by the Applicant.

This Court finds that no injustice will be occasioned on the Respondent if the amendment is allowed since the Respondent will have an opportunity to respond to the Amended Plaint.

I am satisfied that the proposed amendment by the Applicant does not introduce a distinct cause of action with a view of changing the face of the case. The Applicant seeks to introduce an additional cause of action.

Therefore, this Court will allow the Applicant to amend its Plaint in HCCS No. 2285 of 2016 by adding the Registrar of Titles as Co-Defendant and specifically pleading Fraud in the Amended Plaint due to the unfolding of events in regards to the Certificate of Titles for the suit land.

ISSUE 3: Whether the Applicant should be granted leave to reopen its case in High Court Civil Suit No. 2285 of 2016?

Order 6 Rule 2 of the Civil Procedure Rules provides that; "Every pleading shall be accompanied by a summary of evidence to be adduced, a list of the witnesses, a list of documents and a list of authorities to be relied on, except that an additional list of authorities may be provided late, with the leave of court."

The Rule is intended to ensure that a Party comes to Court when they have fully internalized and prepared their case. ***(See Complant Engineering & Trade Ltd Vs Joseph Kironde, HCT-00-CC-MA 172 of 2011).***

Counsel for the Respondent argued that one of the issues highlighted in the Joint Scheduling Memorandum borders on fraud, "Whether the Plaintiff/Respondent fraudulently acquired the lease over the suit Premises," Counsel argued that the issue that borders fraud and that forms the basis of this Application was traversed and included.

The Applicant will have time to examine the Respondent's/Defendant's witnesses on aspects of fraud. The Respondent's/Defendants witnesses will be available for

cross-examination, and there is no need for the Applicant to cause alarm. Furthermore, the Applicant has not made mention of the fresh pieces of evidence that it intends to adduce and/or that will necessitate the reopening of the suit.

Relying on Order 6 Rule (1) (b) of the Civil Procedure Rules and the case of ***Complant Engineering & Trade Limited Vs Joseph Kironde, HCMA No. 172/2011***, Counsel for the Respondent argued that the Applicant's list of witnesses did not include the Registrar of Titles, Mugaino Baker, Ag. Commissioner Land Registration. Based on the nature of the claim (Fraud as highlighted in the Joint Scheduling Memorandum), the Registrar of Titles, Mugaino Baker, Ag. Commissioner Land Registration was envisaged by the Applicant/Plaintiff.

Additionally, Counsel for the Respondent submitted that Mugaino Baker is a witness of the Respondent/Defendant who will be available for cross-examination on the issues stated in his Witness Statement.

In Rejoinder, relying on the case of ***Toolit Charles Okiro Vs Otto Cypriano, Civil Revision No. 002/2019***, Counsel for the Applicant argued that upon closure of the Applicant's case in 2022, the subject matter of the suit was

altered/changed. It has been established that these illegalities were committed within the course of the proceeding and after the Applicant had closed its case. It follows that the Applicant should be granted an opportunity to reopen its case to speak to this new evidence that substantially affects the issue in dispute.

Counsel said that it is not proper to traverse the issue of fraud/illegality through cross-examination when the same is not properly pleaded and particularized. Mr Mugaino Baker is being added in a personal capacity and the Registrar of Titles for breach of statutory duties.

In **Simba Telecom Vs Karuhanga & Anor, Misc. App. No. 451/2014**, Justice Madrama considered the decision of Brennan, Dawson, Toohey and Gaudron J.J. in the case of **Smith Vs South Wales Bar Association (1992) 176 CLR 256** on the principles to be applied in an application to reopen the case or take additional evidence as follows;

"First of all, they held that it is necessary to distinguish between the considerations that may bear on a decision to reopen a case and the processes involved in reconsideration once a case has been reopened. Whether there is an application to reopen on the basis that new or additional evidence is available, it will be relevant to enquire why the evidence was not called at the hearing. If there was a

deliberate decision not to include it, it would tell decisively against the Application.

However, if there was no deliberate omission, different considerations may apply depending on whether the case is simply one in which the hearing is complete or one in which the reasons for judgment have been delivered. Regarding the former, the primary consideration is whether there would be embarrassment or prejudice against the other side.

Where reasons for judgement have been delivered, appeal rules relating to taking fresh evidence provide a useful guide to the manner in which the discretion to reopen should be exercised.

In **Smith Vs South Wales Bar Association (Supra)**, the Court held that the question of whether additional evidence should be taken at the trial is considered separately from the question of whether the case should be reopened. Consequently, even after the case has been reopened, the Court retains its discretionary power to admit any evidence. In the instant Application, the Plaintiff/Applicant sought leave to reopen its case and be allowed to tender in all its



evidence and call necessary witnesses in HCCS No. 2285 of 2016.

During Court Proceedings, the Counsel for the Applicant submitted that the Court made some orders where the Defence was to produce a number of exhibits like a Certificate of Title and the Applicant/Plaintiff was served with documents. Those documents became new documents created, especially the Certificate of Title. Counsel for the Applicant submitted that a number of actions had been taken to counter all evidence and exhibits in Court that touched the pleadings, especially the cause of action. Defendant acquired Title where also Plaintiff has Title. The Applicant/Plaintiff's Plaint only had injunction, vacant possession, punitive damages, and interest. They have also revealed fraud, so there is a need to prove facts of fraud, especially actions of Commissioner Land Registration. It's essential they appear.

Counsel for the Applicant submitted that they did not delay filing this Application since this Application was filed on 24th January 2024 upon discovering the Respondent had fraudulently obtained a Certificate of Title to the suit land on 23rd June 2023.



In **Mathews Vs S.P.I. Electricity Pty Ltd & Sons (Ruling No. 28) [2013] VSC 523**, Court stated that there are four recognized classes of cases in which a Court may grant leave to reopen a party's case, which are; -

- a. Where fresh evidence is unavailable or not reasonably discoverable before becomes known and available
- b. Where there has been inadvertent error
- c. Where there has been a mistaken apprehension of the facts and
- d. Where there has been a mistaken apprehension of the law.

The overriding principle is that the Court considers whether taken as a whole, the justice of the case favours the grant of leave to reopen, and any prejudice in reopening the case should be minimal. Other Considerations the Court should take into account include the reason why the evidence was not led timeously, the degree of materiality of the evidence, the possibility that it might have been shaped, the balance of the prejudice, the stage that the litigation had reached, the general need for finality in judicial proceedings and the appropriateness of visiting the Advocates remissness on the head of his client. (See: ***Justus Kyabahwa Vs China Henan International Cooperation Group Company Ltd, C.S. No. 721/2020***)



The Applicant/Plaintiff filed HCCS No. 2285/2016 for an Order of Vacant Possession of Land comprised in LRV 4180 Folio 21 registered in the names of the Applicant. However, with the discovery of new evidence of fraud in regards to the Certificate of Title of the suit land, the Applicant/Plaintiff sought to reopen its case in order to adduce fresh evidence of fraud discovered during the pendency of the suit when the Applicant/Plaintiff had already closed its case.

Well aware that HCCS No. 2285/2016 is a 2016 case (8 years now) and that the Applicant/Plaintiff has closed its case, with the Defendant opening its case, this proposed new/fresh evidence is important to the outcome of the case, and it should be one of those categories of cases that need to be re-opened where the initial subject matter is believed to have been altered during the pendency of the suit which if ignored may affect the finality of the final judgement. I thereby find it just to grant the Applicant leave to reopen its case.

Consequently, given the decisions on the three issues above, the following orders are made:



1. The Registrar of Titles, is hereby joined as Defendant in HCCS No. 2285 of 2016.

2. The Applicant is granted leave to amend the Plaintiff in HCCS No. 2285 of 2016.

3. The Applicant is granted leave to reopen its case in HCCS No. 2285 of 2016 to tender additional evidence and call necessary witnesses.

4. Costs of this Application shall be in the cause.

DATED AT KAMPALA THIS ^{27th} **DAY OF** ^{August} **-----2024**

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KANYANGE SUSAN
JUDGE LAND DIVISION.