

THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT KAMPALA  
(CIVIL DIVISION)

MISC. APPLICATION NO. 1045 OF 2020  
(ARISING FROM MISC. CAUSE NO. 179 OF 2020)

THE TAALA FOUNDATION LIMITED=====APPLICANT

-VERSUS-

1.HAJJI ABDUL KIYIMBA

2.PRINCIPAL OFFICER PHILIMON WONIALA

3.KYENGERA TOWN COUNCIL

4.ATTORNEY GENERAL

5.MUKIIBI HENRY AND 20 OTHERS=====RESPONDENTS

BEFORE: HON. JUSTICE PHILLIP ODOKI

RULING

**Introduction:**

[1] The applicant filed this application under Order 1 Rule 10 and 12 of the Civil Procedure Rules seeking to be joined as an applicant in Miscellaneous Cause No. 179 of 2020.

**Background:**

[2] On the 21<sup>st</sup> July 2020, the 5<sup>th</sup> respondent and 20 others filed Miscellaneous Cause No. 179 of 2020 against the 1<sup>st</sup> -4<sup>th</sup> respondents seeking to enforce: their rights not to be subjected to any form of torture or cruel, inhuman or degrading treatment or punishment under Article

24 and 44 (a) of the Constitution; their right to privacy under Article 27 of the Constitution; and their right not to be discriminated against under Article 21 of the Constitution. All preliminary steps have been concluded in Miscellaneous Cause No. 179 of 2020 and the case is due for hearing. Meanwhile, the 16<sup>th</sup> November 2020, the applicant filed the instant application.

**The applicant's case:**

[3] The applicant's case is set out in the Notice of Motion and the affidavit of Severus Hama Owamparo, a director in the applicant. In summary, the applicant case is that it was contacted by the 5<sup>th</sup> respondents who narrated to it the violation of his rights and those of other 20 victims in Miscellaneous Cause No. 179 of 2020. The applicant conducted a needs assessment, therapy, post incident mental health assessment of the said victims and found that the victims had suffered psychological trauma, depression and suicidal ideation. The applicant contended that they had obtained more pertinent facts pertaining to the torture of the victims which arose subsequent to the filing of Miscellaneous Cause No. 179 of 2020 which may materially affect the outcome and impact on the reliefs sought by the victims and therefore necessitate the amendment of the Miscellaneous Cause No. 179 of 2020 to add the applicant in order to enable the court to determine the real questions in controversy between the parties in finality so as to avoid a multiplicity of suits arising from the same transaction or a series thereof.

**The respondent's case:**

[4] Mr. Mwasanje Stephen, the Principal Township Officer of the 3<sup>rd</sup> respondent filed an affidavit in reply on behalf of the 3<sup>rd</sup> respondent while Mr. Sam Tusubira, a State Attorney, filed an affidavit in reply on

behalf of the 4<sup>th</sup> Respondent. The 1<sup>st</sup>, 2<sup>nd</sup> 5<sup>th</sup> and other 20 respondents did not file any affidavit in reply. In summary, the 3<sup>rd</sup> and 4<sup>th</sup> respondent's case is that the applicant's presence before this court is not necessary to enable the court effectually and completely adjudicate upon and settle all questions involved in Miscellaneous Cause No. 179 of 2020. They also contend that the orders and declarations in Miscellaneous Cause No. 179 of 2020 will not directly or legally affect the applicant. They further contend that the applicant has not demonstrated that they have a cause of action against the respondents in Miscellaneous Cause No. 179 of 2020. According to the 3<sup>rd</sup> and 4<sup>th</sup> respondents, this application will prejudice the respondents who have already closed their pleadings in Miscellaneous Cause No. 179 of 2020.

**Representation:**

[5] The applicant was represented by Freda Mutesi and Patrick Musiime. The 2<sup>nd</sup> and 4<sup>th</sup> Respondents was represented by Allan Mukama and the 5<sup>th</sup> -25<sup>th</sup> respondents were represented by Francis Tumwesigye.

**Submissions of counsel:**

[6] Counsel for the applicant submitted that the applicant would want to present evidence in the court which was not captured by the applicants in Miscellaneous Cause No. 179 of 2020 and also as an interested party in the matter being an organization that promotes mental health. According to counsel, granting the application will enable the court to conclusively determine the matter between the parties and that no prejudice will be occasioned to the respondents.

[7] In reply, counsel for the 2<sup>nd</sup> and 4<sup>th</sup> respondent submitted that the affidavit in support of the application is incurably defective since the

jurat is in a different page from the main body of the affidavit. Counsel relied on the decision of my learned brother Judge David Batema in **Dr. Bayigga Micheal Phillip Lulume versus Mutebi David Ronnie and Another, High Court Election Petition No. 014 of 2016.** Counsel further submitted that the application does not meet the conditions of Order 1 Rule 10 of the Civil Procedure Rules on joinder of parties, which is that the order being sought will directly affect the applicant. Counsel further argued that the application is dragging the hearing of Miscellaneous Cause No. 179 of 2020.

[8] Counsel for the 5<sup>th</sup> – 25<sup>th</sup> respondents did not oppose the application. He stated that his client will be pleased with whatever directive the court will give.

**Determination of the court:**

[9] Before delving into the merits of this application, I shall determine objection by counsel for the 2<sup>nd</sup> and 4<sup>th</sup> respondent that the affidavit in support of the application is incurably defective since the jurat is in a different page from the main body of the affidavit.

[10] My position on stand-alone jurats has been and still remains the same that there is no law in Uganda that stipulates where the jurat in an affidavit should be. See the case of **Protazio Begumisa versus Wilfred Nuwagaba and another, High Court Election Petition No.001 of 2021.**

[11] Be that as it may, the facts in the instant case are clearly distinguishable from those in **Dr. Bayiga** (supra). In that case, the body of the affidavit was typed in different font and spacing from those in the jurat, in some affidavits, the jurat was pushed to the next page leaving

some paragraphs in the body of the affidavit in the middle of the page, in most affidavits the words "sworn in Jinja" was crossed and replaced with "sworn in Kampala" without anybody counter signing the alteration. The impugned affidavits in the instant case do not have any of the feature pointed out above.

[12] I therefore find no merit in the submissions of counsel for the 2<sup>nd</sup> and 4<sup>th</sup> respondent that the affidavit in support of the instant application is incurably defective.

[13] On the merits of the application, Order 1 rule 10(2) of the Civil Procedure Rules under which this application is brought 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."* Underlined for emphasis.

[14] In **Departed Asians Property Custodian Board v. Jaffer Brothers Ltd SCCA No. 8 of 1998** Mulenga JSC held that;

*"For a person to be joined on the ground that his presence in the suit is necessary for effectual and complete settlement of all questions involved in the suit one of two things has to be shown. Either it has to be shown that the orders, which the plaintiff seeks in the suit would legally affect the interest of that person, and that*

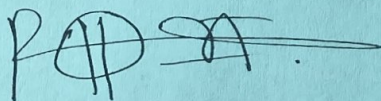
it is desirable, for avoidance of multiplicity of suits, to have such person joined so that he is bound by the decision of the court in that suit. Alternatively, a person qualifies, (on application of a defendant) to be joined as a co-defendant, where it is shown that the defendant cannot effectually set up a defence he desires to set up unless that person is joined in it, or unless the order to be made is to bind that person. Underlined for emphasis.

[15] In the instant application, the applicant has not demonstrated how the orders, which the applicants in Miscellaneous Cause No. 179 of 2020 are seeking would legally affect its interest. Their only reason advanced by the applicant for wanting to be joined as a party in Miscellaneous Cause No. 179 of 2020 is to present new evidence which they obtained after Miscellaneous Cause No. 179 of 2020 was filed. I do not find such a ground legally tenable for joinder of parties under Order 1 rule 10(2) of the Civil Procedure Rules.

[17] I therefore find no merit in this application. It is accordingly dismissed with costs to the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> respondents.

I so order.

Dated this 12<sup>th</sup> day of April, 2022.



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Phillip Odoki

**Judge**