

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA**  
**(CIVIL DIVISION)**

**MISCELLANEOUS APPLICATION NO. 870 OF 2018**  
**(ARISING FROM CIVIL SUIT NO. 27 OF 2016)**

**UGANDA PLASTICS MANUFACTURERS  
& RECYCLERS ASSOCIATION LTD----- APPLICANT**

**VERSUS**

**NATIONAL ENVIROMENT MANAGEMENT AUTHORITY..... RESPONDENT**

**BEFORE HON. JUSTICE SSEKAANA MUSA**

**RULING**

This is an application to add parties to the original suit brought under Order 1 rules 10(2)(4) & Rule 13 and Order 52 rule 1 & 3 of the Civil Procedure Rules.

The respondent filed a suit against the respondent in 2016 and before the case could be heard they realised that the other parties ought to be added in order for court to effectively determine the dispute before court for purposes of awarding them of damages and other consequential orders or remedies.

The applicant brought the main suit challenging the actions of the applicant when it arbitrarily closed the applicant's members from factories in diverse parts of the Country.

The applicants members are investors who are duly licensed by Uganda Investment Authority with assurances and encouragement that their investments

in plastics and recycling of plastics in acceptable in Uganda and they have heavily invested in the said industry

The Government and Uganda Investment Authority have continuously encouraged the applicant's members to invest in the production and recycling of plastics and waste management and as a result they have injected colossal sums of money and the abrupt change of policy by the Government on plastics in Uganda will occasion them great financial and economic loss.

The applicant was represented by *Stanley Omony & Hansen Rugasiira* and the respondent was represented by *Ms Sarah Naigaga*.

In the interest of time court directed the counsel for both parties to file written submissions.

The application is supported by the affidavit of Rugasiira Elly setting out the basis of adding other parties like Attorney general and Uganda Investment Authority since they are partly involved in the activities of the applicant and both their contradictory roles influence their decisions and affect their operations.

The respondent filed an affidavit in reply by Isaac Ntujju to this application and opposed the application on grounds that proposed Joinder seeks introduce new facts and a different cause of action from the matter already in Court.

In addition, the respondent opposed this application on grounds that the Government and Uganda Investment Authority are not involved in the acts or series of actions that the respondent engaged in the enforcement of the ban on manufacture, import, sell, use and distribution of polythene carrier bags.

The only issue for determination in this application is:

***Whether the applicant should be allowed to add Attorney General & Uganda Investment Authority as defendants.***

Under Order 1 rule 3 provides for joinder of defendants;

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 question of law or fact would arise.

The respondent's counsel has rightly cited the law on joinder of parties and the case of *Deported Asian Property Custodian Board vs Jaffer Brothers Ltd* [1999] 1 EA 55 where Justice Mulenga JSC noted:

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

In the present case, the respondent is the principal agency in Uganda for the management of the Environment and shall coordinate, monitor and supervise all activities in the field of the environment.

The actions of the respondent are triggered by the Government through its policy on environment or legislation that may stop certain activities through the line Ministry responsible for Environment.

In this particular case, the respondent is implementing and enforcing a ban on manufacture of certain plastics and supervising the manufacture and sale of certain plastic products for exception production and use.

It is apparently clear that the mandate of the respondent is carried out on instructions and directions of the Government and they are merely an implementing agency and if the applicant wishes to join Attorney General as a government pleader in the representative capacity would be in the interest of both the applicant and defendant in the determination of the dispute beforehand.

The respondent's only contention is that this will introduce new facts or cause of action. Indeed it is true, the addition of the new defendants would introduce new

facts that constitute their claim against them and also probably a new cause of action.

The question is, whether the respondent would suffer any prejudice if any of the parties are added as defendants. The respondent has not set out any potential prejudice that they would suffer. The said new facts shall be responded to by way of amended defence/pleadings. Secondly, this matter has never been heard by this court and therefore no damage would be done to the defendant's case.

For the determination of the question of who is a necessary party there are two tests; There must be a right to some relief against such a party in respect of the matter involved in the proceedings in question; and It should not be possible to pass effective decree in the absence of such a party.

I note that the original failure to add the Attorney General as a party was through a mistake or oversight or the failure was caused by inadvertence. This court could even on its own motion could have moved itself to have Attorney General added as a party as provided under Order 1 rule 10(2) to enable the court to effectually and completely to adjudicate upon and settle all questions involved in the suit.

Similarly, the applicant is also allowed to join several causes of action under Order 2 rule 4 of the Civil Procedure Rules which provides;

Except as otherwise provided, a plaintiff may unite in the same suit several causes of action against the same defendant or the same defendants jointly; and plaintiffs having causes of action in which they are jointly interested against the same defendant or the same defendants jointly may unite the same causes of action in the same suit.

The applicant/plaintiff is at liberty to join causes of action. The argument by the respondent that the introduction of the new parties will introduce a new cause of action has no basis. The basic principle for consideration is whether the new cause of action can be tried with the original suit and/or is there a nexus between the two causes of action and secondly will it occasion any injustice to the opposite party.

In the present case, there are common questions of law and fact that would arise if separate suits were instituted against them.

Where substantial common question of fact are involved in different claims against different defendants, their joinder in one suit cannot be termed multifarious.

This court is empowered under Order 2 rule 7 to order separate trials, if any causes of action are joined in one suit and cannot be conveniently tried or disposed of together.

This court does not find any justifiable to refuse the joinder of the two parties; Attorney General and Uganda Investment Authority. This would assist in avoiding a multiplicity of suits and also reduce on the case congestion and backlog.

This application allowed and with no order as to costs.

The applicant is allowed to amend his pleadings to reflect the new parties and must file and serve the parties as if it is a new matter.

It is so ordered.

**SSEKAANA MUSA**

**JUDGE**

**6<sup>th</sup>/07/2018**