

UGANDA / JUDGMENT

Chris Nkunzingoma and Another v Nasani Ntambirweki (Miscellaneous Application 8 of 2022) [2025] UGHC 353 (10 April 2025)

[2025] UGHC 353

COURT

High Court of Uganda

BEFORE

Emokor, J

CASE / FILE NUMBER

Miscellaneous Application 8 of 2022

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**5 THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT KABALE
MISCELLANEOUS APPLICATION NO. 0008 OF 2022 (Arising from Civil Suit No. 0016
of 2021)**

- **1. CHRIS NKUNZINGOMA**
- **2. MANIRAGABA GEOFFREY:.....APPLICANT**

VERSUS

NASANI NTAMBIRWEKI:.....RESPONDENT

15 BEFORE: HON. JUSTICE SAMUEL EMOKOR

RULING

The Applicants bring the instant application by Chamber Summons under **Section 33** of the **Judicature Act**, **Sections 7 and 98** of the **Civil Procedure Act**, **Order 6 Rule 30** and **Order 7 Rule 11** and **Order 41 Rules 7 and 9** of the Civil

20 Procedure Rules seeking orders that Civil Suit No. 0016 of 2021 be struck out and provision be made for costs of the application.

The grounds upon which this application is premised are that;

- **a) That Civil Suit No. 0016 of 2021 is barred in Law as it is resjudicata.**
- **b) That Civil Suit No. 0016 of 2021 was filed in abuse of Court process.**

- 25 c) That Civil Suit No. 0016 of 2021 is frivolous and vexatious.
- d) That it is fair and just that litigation arising from the distribution of the estate of the late Daudi Kahungu must come to an end such that the respective beneficiaries can put their respective shares to productive use.

5 e) That it is in the interest of substantive justice that the Respondents' Plea in Civil Suit No. 0016 of 2021 is struck off.

The application is supported by the affidavit of the first Applicant who expounds on the grounds upon which this application is premised. The Respondent filed an affidavit in reply to the application.

10 The Applicant was represented by Messrs Twikirize & Co. Advocates while Messrs Tumwebaze, Atugonza, Kobusingye Advocates & Legal Consultants appeared for the Respondents.

Counsel in this matter proceeded by way of written submissions.

I do not find it necessary to reproduce verbatim the averments of the parties as 15 contained in their affidavits nor the submissions of Counsel. It should suffice to note that I have studied the affidavits and perused the submissions.

The parties raised the following issues for determination;

- 1. Whether Civil Suit No. 0016 of 2021 is resjudicata.
- 2. Whether Civil Suit No. 0016 of 2021 was filed in abuse of Court process
- 20 does not disclose any cause of action and is frivolous and vexatious.
- 3. Whether Civil Suit No. 0016 of 2021 is statute barred.
- 4. What are the remedies available to the parties?

Issue 1.

Whether Civil Suit No. 0016 of 2021 is resjudicata.

25 It is the submission of Counsel for the Applicant that the gist of the respondent's claim is based on Annexure "B" to the Plea initially presented in HCCS No. 1323 5 of 1999; **Ernest Senkeri and Another versus John Aya Gashenyi** that was rejected by the Court as being a forgery. It is also the contention of Counsel that the said Judgment has never been appealed against or set aside.

Counsel for the Respondent in his written submissions refers to the provisions of **Section 7** of the **Civil Procedure Act** that provides the ingredients for a matter 10 that is resjudicata.

It is the contention of Counsel that the instant Suit does not meet the parameters for a matter that is resjudicata. Counsel for the Respondent also relies on the decision in **General Industries (U) Ltd versus Non-Performing Assets Recovery Trust and others**. Civil Appeal No. 0051 of 2007.

15 Determination.

Under **Section 7** of the **Civil Procedure Act** a matter is resjudicata when the following elements are proved.

- i) The same parties litigating in the former Suit should be the same parties litigating in the latter Suit.
- 20 ii) A final decision on the merits has been given on the former Suit by a competent Court.
- iii) The Suit or its subject matter must have been directly in issue in the former Suit.
- iv) The parties should be litigating under the same title.
- 25 v) That the earlier Suit must have been decided by a competent Court and that fully resolved the dispute.

5 Are the parties in the two Suits substantially the same?

The parties in HCCS No. 1323 of 1999 are; **Ernest Senkeri and Chris Nkuzingoma versus John Aya Gasisenyi** while in the present Suit of HCCS No. 0016 of 2021 the parties are **Samalie Nyirabyiringiro versus Chris Nkuzingoma and Maniragaba Geofrey**.

10 On the face of it the parties in the two cases are not the same.

I need not labour this point.

Is the subject matter the same?

The Judgment in HCCS No. 1323 of 1999 is in regard to a caveat lodged on estate land and whether the Letters of Administration should be granted to the Applicant

15 while the action in the present Suit No. 0016 of 2021 emanates from the Administration of the Estate property over which the instant Applicants obtained letters to in HCCS No. 1323 of 1999.

The matters in issue in the two Suits are very different.

I do not find it necessary to proceed with further analysis having found that the

20 Applicants in their claim that the matter before this Court is rejudicata have failed in the above two grounds.

The first issue is therefore answered in the negative.

Issue 2.

Whether Civil Suit No. 0016 of 2021 was filed in abuse of Court process, does 25 not disclose any cause of action and is frivolous and vexatious.

- 5 It is the submission of the Appellant that the Respondent's act of instituting different suits between the same parties in different Courts amounts to forum shopping and abuse of Court process. Further that the Respondent has failed to comply with the Court's request to consolidate the two Civil Suits; Civil Suit No, 0016 of 2021 and Civil Suit No. 0212 of 2021.
- 10 In reply Counsel for the Respondent submitted that Civil Suit No. 0016 of 2021 was filed in this Court to obtain injunctions which prompted this Honorable Court to call for the consolidation of Civil Suit No. 0212 of 2021 which was executed by the consent of the parties.

In rejoinder the Applicants Counsel was insistent that the Plaintiff/Respondent

15 was without a cause of action against the Applicants and was just a fishing expedition and forum shopping.

Determination.

In **Cook versus Gull LR8E. P116** and in **Read versus Brown 22QBD P.31** a cause of action was defined as every fact which is material to be proved to enable the 20 Plaintiff succeed or every fact which if denied, the Plaintiff must prove in order to obtain Judgment.

Three elements necessary for proof of action was laid down in **Auto Garage versus Motorkov [1971]1EA 514**

- 1) **That the Plaintiff enjoyed a right.**
- 25 2) **That the right was violated.**
- 3) **That the defendant is liable.**

5 A perusal of the Plaint shows that the Plaintiff has pleaded all relevant facts to show that he enjoyed a right as a beneficiary of the Estate of his late father and his rights are being violated by the current Administrators who he alleges are mismanaging the Estate. All this I find gives rise to a cause of action.

The second issue shall be answered in the negative.

10 **Issue 3.**

Whether Civil Suit No. 0016 of 2021 is statute barred.

It is the submission of the Applicant that Civil Suit No. 0016 of 2021 is barred by **Section 20** of the **Limitation Act** which provides:

*"Subject to Section 19(1) no action in respect of any claim to the personal estate"

15 *of a deceased person or to any share or interest in such estate whether under a will or to any share or interest in such estate whether under a will or intestacy shall be brought after the expiration of twelve years from the date when the right to receive the share or interest accrued and no action to recover arrears of interest in respect of any legacy or damages in respect of those arrears shall be brought after the* 20 *expiration of six years from the date which the interest came due"*

To buttress his point Counsel relies on the decision in **Al Hajj Nassar Ssebagala versus Attorney General and others Constitutional Petition No. 0001 of 1999**. It is the contention of Counsel that the exception to the rule is that of disability which exception is further curtailed by the requirement that the action must be brought at any time before the expiration of 6 years from the date when the person ceased to be under the disability as provided under **Section 21(1) of the 5 Limitation Act**. Counsel presses the point that the Plaintiffs pleadings do not disclose any reason as to why she did not bring the Suit within the requisite time and that this alone renders Civil Suit No. 0016 of 2021 statute barred.

Counsel for the Respondent in reply contends that **Section 20 of the Limitation Act** does not apply to the instant Suit and that the issues before this Court are not

10 about claims for shares at this stage but rather for revocation of Letters of Administration that are in the hands of the Applicant, which Letters the Applicant has squarely abused and misused against the Respondent and her siblings.

Determination.

Counsel for the Applicant invites this Court to give **Section 20 of the Limitation 15 Act** a strict interpretation and application which would result in a finding that no action in respect of any claim to the personal estate of a deceased person is sustainable when brought after the expiration of twelve years from the date when the right to receive the share or interest accrued. In the present scenario the Applicants were granted Letters of Administration on 17/10/2003 as per HCCS

20 No. 1323 of 1999 and as a result the actions of the Respondent/Plaintiff would be considered time barred.

Lord Griffiths in **Pepper versus Hart [1993] 1 ALLER 42** held inter alia that;

"The days have long passed when the Courts adopted a strict constructionist view of interpretation which required them to adopt a literal meaning of the language"

25 Considering **Section 20 of the Limitation Act** my sister lady Justice Ketrah Kitarisibwa Katunguka in **Habai Mohamed Rajab and 05 others versus Muzamil Mohamed Rajab HCCS No. 0188 of 2015** held that;

5 "...for as long as there is no completion of administration of the estate any aggrieved party may challenge the administration of such estate by seeking a revocation of the grant of Probate or Letters of Administration of that estate...for as long as administration of the estate is still open the authority of the administrators is open to challenge in which case limitation under Section 20 does*

10 *not apply"*

The learned Lady Judge later in her Ruling also invokes the provisions of **Article 126** of the **Constitution** arguing that substantive justice should always as much as legally possible be promoted because sticking to limitation while the dispute continues in the family is a dangerous trend.

15 This Court in **Atwongyere Enid and 04 others versus Fred Mwerinde HCCS No. 0015 of 2022** fully agreed with the position in the above cited case of HCCS No. 0188 of 2015.

I have no intentions of departing from the same. I hold the firm view that holders of probate or Letters of Administration who have not performed their duties as 20 per their undertaking and bond must be held to account and should not be allowed to shield themselves under the law while the estate they manage and the beneficiaries there under despair. The Applicants in this matter cannot be allowed to continue to be holders of valid Letters of Administration to an estate that they cannot be called upon to account.

5 Issue No. 3 shall therefore be answered in the negative.

For the foregoing reasons the instant application is hereby dismissed with each of the parties bearing their own costs and the consolidated Suit (s) are hereby set down for hearing.

Before me,

..... **Samuel Emokor**

Judge 10/04/2025.

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