

DFCU Bank (U) Limited v Takumara & 4 Others (Miscellaneous Application 525 of 2024) [2025] UGCommC 25 (7 March 2025)
[2025] UGCommC 25

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- 1. DANIEL TAKUMARA MUGISA
- 2. MUWEKO ENTERPRISES LTD
- 3. CISSY KIDANDI KAYONGO
- 15 4. MOSES KAYONGO
- 5. FUTURELAND (U) LTD :::::::::::::::::::: RESPONDENTS

BEFORE HON. LADY JUSTICE HARRIET GRACE MAGALA**20 RULING****Background**

The Applicant is a Defendant and Counterclaimant in *HCCS No. 0469 of 2021: Daniel Takumara Mugisa Versus Dfcu Bank (U) Ltd. & Anor.* and *HCCS No. 0942 of 2017: Kidandi Cissy Kayongo & 2Ors. Versus Dfcu*

25 *Bank (U) Ltd.* Both suits, which are still pending before this honorable court, shall be referred to as "*the suits".*

In HCCS No. 0942 of 2017, the Applicant is challenging the sale of properties comprised in Kibuga Block 9 Plot 932 at Kagugube, Kibuga Block 11 Plot 1645 at Kabowa, Kyadondo Block 262 Plot 840, Kyadondo Block 690

30 at Munyonyo and Kyadondo Block 257 Plot 109 at Munyonyo. (hereinafter referred to as the "suit properties"). In HCCS No. 0469 of 2021, the Plaintiff

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5 is challenging the advertisement for sale of his property comprised in LRV 3868 Folio 5 Plot 78 Nakivubo Road by the Applicant.

The Applicant in both suits objected and counterclaimed that the transactions arose out of loan facilities advanced to the 5th Respondent in November 2013 and May 2015; mortgages were created on the disputed

10 properties by the 3rd and 4th Respondents. The Applicant therefore filed this Application to consolidate both suits to avoid multiplicity of suits and conflicting decisions with respect to similar sets of facts and save the court valuable time since similar questions of law or fact are involved.

Representation

15 The Applicant was represented by M/s Ligomarc Advocates while M/s Kabega, Bogezi & Bukenya Advocates represented the Respondents.

Hearing

The Application was supported by the Affidavit of Muhammed K. Ssenonga, the applicant's Legal Manager. Ms. Atulinda Majda filed an Affidavit in Reply, 20 and the applicant then filed an Affidavit in Rejoinder.

Determination

Preliminary point of law

The Applicant objected to the Affidavit in Reply as defective because it did not disclose on whose behalf it was deposed.

25 Affidavits under **Order 19 Rule 3 (1) of the Civil Procedure Rules**, shall be confined to such facts as the deponent is able of his or her own knowledge to prove, except on interlocutory applications, on which statements of his or her belief may be admitted, provided that the grounds thereof are stated.

In the case of **Bankone Limited Versus Simbamanyo Estates Ltd HCMA**

30 **No. 645 of 2020,** court observed that what is required in affidavits is the knowledge or belief of the facts by the deponent.

- 5 The Affidavit in Reply to this Application was deposed by Atulinda Majda, who does not state in which capacity she deposed it. However, under paragraph one of the Affidavit in Reply, she states that she is conversant with matters pertaining to this case. There is no requirement for authorization as long as the affidavit is confined to facts within the deponent's knowledge or belief. In
- 10 the premises, the preliminary objection is overruled.

Issue for determination

Whether HCCS No. 0942 of 2017 and HCCS No. 0469 of 2021 should be consolidated

Under **Order 11 Rule 1 of the Civil Procedure Rules**, this Court can order 15 consolidation of suits where two or more suits are pending in the same court and involve the same or similar questions of law or fact. In the case of *Visare *Uganda Limited Versus Muwema & Co. Advocates and Solicitors Misc. Application Nos. 0826 and 0827 of 2023**, the court observed that:

"The law under Order 11 rule 1 of The Civil Procedure Rules, is that* 20 *where two or more suits are pending in the same court, based on the same facts, founded on more or less similar grounds and seeking similar relief from the court, although filed separately, in which the same or similar questions of law or fact are involved or common to all may arise, such suits may be consolidated, either upon the application of one of the* 25 *parties or at the court's own motion and at its discretion." (Emphasis added)

Therefore, the primary consideration is that there exist two or more suits, in the same court and with common questions of law or fact. **See. Willy Jagwe Versus Bugingo Wilfred CACA No. 114 of 2016**

30 The learned **Hon. Justice Mubiru** explained further in **Visare Uganda Ltd Versus Muwema & Co. Advocates** (supra) that:

> *Where multiple cases have common parties, facts, issues, witnesses, transactions or occurrences, and/or claims for relief, the court may join*

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- 5 *the proceedings. A court must balance the interests of expediency and convenience without possible prejudice (unfairness) to the parties. In weighing efficiencies and fairness of an order, court should consider variety of factors including: a) the extent of the difference or commonality of the facts or issues in the proceedings; b) the status of* 10 *the progress of the several proceedings; and c) the convenience or inconvenience, in terms of time, money, due process and administration, of bringing the proceedings together. An order for consolidation will generally be appropriate only where the proceedings*
- 15 According to the facts in HCCS No. 0942 of 2017, the Applicant is challenging the sale of the suit properties while in HCCS No. 0469 of 2021, the Plaintiff, is challenging the advertisement for sale of his property comprised in LRV 3868 Folio 5 Plot 78 Nakivubo Road by the Applicant.

are at an early stage in the litigation process."

The claimants are different, but the defendant in both suits is the same, i.e., 20 the Applicant herein.

The Defendant in HCCS No. 0942 of 2017, denies the claims and counterclaims that the 5th Respondent acquired a loan of Ugx 5,000,000,000/-, (Uganda Shillings Five Billion only), USD 3,000,000 (United States Dollar Three Million only) and USD 500,000 (United States

- 25 Dollars Five Hundred Thousand only) through loan agreement dated 19th November 2013, and an overdraft of Ugx 7,000,000/- (Uganda Shillings Seven Billion only) vide demand overdraft facility letter dated 28th May 2015. This defence is also repeated in HCCS 0469 of 2021 by the Defendant. That these monies/loan facilities were secured by, among others, the Disputed 30 properties.
- The Deponent in the Affidavit in Reply avers that the issue in HCCS No. 0469 of 2021 is whether the plaintiff acquired the property comprised in Plot 78 Nakivubo lawfully or fraudulently, whereas the question for determination in HCCS No. 0942 of 2017 is whether the plaintiffs are

5 indebted to the defendant and whether the defendant is entitled to realise the disputed properties.

For the Applicant, counsel submitted that the question in both cases is whether the Applicant is entitled to enforce its rights as a mortgagee in the disputed properties.

10 This court notes that the two suits involve claims on separate and distinct properties. However, the suits arose out of similar transactions, namely the loan facility agreements between the Fifth Respondent and the Applicant's predecessor bank, the now defunct Crane Bank Uganda Limited. All the disputed properties were subject to these transactions, as can be seen from 15 Annextures A1 and A2 to the Affidavit supporting this Application.

Both HCCS No. 0469 of 2021 and HCCS No.0942 of 2017 involve facts relating to the loan facilities obtained by the Fifth Respondent, which the Respondents do not dispute. The questions for determination in both suits are common or likely to be, and they relate to the rights or interests of the parties in the 20 disputed properties. The suits relate to a similar transaction, that is, the loan acquisition by the Fifth Respondent and the mortgaging of the disputed properties by the Third and Fourth Respondents. This therefore means that some important facts in both suits are similar.

Counsel for the Applicant submitted that consolidating suits avoids

- 25 multiplicity of proceedings and saves court's time and resources. He relied on the cases of **Kilembe *Mines Versus Jinja District Land Board and others HCMA No. 139 of 2023** and **Fountain Publishers Limited and others versus Prime Finance Limited Miscellaneous Application Number 1066 of 2020***.
- 30 The deponent of the Affidavit in Reply deposed that the Applicant was using this Application to cover up its failed amendment of the written statement defence and counterclaim in HCCS No. 0469 of 2021 that the Respondents objected to in HCMA No. 0836 of 2022.

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- 5 One purpose of consolidating suits is to avoid a multiplicity of proceedings that involve similar facts or questions of law. Consolidation deters the prosecution of suits with relatively similar facts or questions of law. It also allows the court to attend to these facts and questions simultaneously and grant remedies to the parties, thereby saving parties' and the court's
- 10 resources. Consolidation also ensures that the courts do not deliver conflicting decisions on similar facts or questions of law.

In Louis Herbert *Stumberg & Henry Edward Stumberg Versus Theodore Wynand Potgeiter (1970) EA 323* at 326, Justice Kneller observed that:

"Consolidation of suits should be ordered where there are common* 15 *questions of law or fact but should not be ordered where there are deep differences between the claims and differences in each action. Where there are common questions of law or fact in actions having sufficient importance in proportion to the rest of each action to render it desirable that the whole of the matters be disposed of at the same time,* 20 *consolidation should be ordered."

Further, this court notes that both suits are yet to be heard. Therefore, the timing of the Application was perfect. Additionally, convenience favors consolidating the suits and enabling their disposal at once. There is no evidence that the Respondents will be inconvenienced by the consolidation.

25 In conclusion, the court finds that the Applicant has made a good case for consolidating the suits. This application is hereby allowed, with each party bearing its own costs.

Signed and dated at Kampala this 7th day of March 2025.

30 Harriet Grace MAGALA

Judge

Delivered online via ECCMIS this 12th day of March 2025.

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