

UGANDA / JUDGMENT

**Elizabeth Kabera v Kasingirwa and
2 Others (Civil Suit No. 514 of 2017)
[2021] UGHCLD 47 (31 March 2021)
[2021] UGHCLD 47**

COURT

HC: Land Division (Uganda)

BEFORE

Kazaarwe, J

CASE / FILE NUMBER

Civil Suit No. 514 of 2017

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**THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT KAMPALA
LAND DIVISION CIVIL SUIT NO. 514 OF 2017**

ELIZABETH KABERA:..... PLAINTIFF

VS

1. KASINGIRWA SCOVIA

10 2. NSHEKANABO ANASTANZIA

3. LUWEDDE SPECIOZA:.....DEFENDANTS

Before: Hon. Lady Justice Olive Kazaarwe Mukwaya

RULING

15 Before the commencement of the trial of this suit, Civil Suit No. 514 of 2017, Counsel for the Defendants raised a preliminary objection to the effect that this suit was res judicata to Civil Suit No.7/04 of the Chief Magistrates Court at Entebbe.

This Court gave Counsel to the parties directives to file submissions for and against the preliminary objection. Counsel for the Defendant filed his submissions on the 8th

20 January 2021 but this Court received no reply from Counsel for the Plaintiffs.

This is a point of law and despite the failure by the Plaintiffs' advocate to file his submissions, this Court shall rule on the matter.

Resolution.

Section 7 of the Civil Procedure Act provides as follows;

25 *7. Resjudicata*

No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try the subsequent suit or the suit in which the issue

5 *has been subsequently raised, and has been heard and finally decided by that court.*

It is the contention of Mr. Dennis Kwizera, Counsel for the Defendant that the subject matter in Civil Suit No.7/2004 in the Magistrate Grade 1 Court in Entebbe, described as "Kibanja situated at Namulada Village on Entebbe Kampala Road" is the same subject matter in Civil Suit 514 of 2017, the instant suit. Mr. Kwizera further contended

10 that the Plaintiff, Elizabeth Kabera, is the same Plaintiff in Civil Suit 7 of 2004 of Entebbe.

I agree with Counsel for the Defendant when he contends that establishment of rejudicata is a matter of mixed law and fact.

Turning to the two suits in issue before me; Civil Suit No.7 of 2004, proceeded exparte

against the 2 15 nd Defendant in Civil Suit No. 514 of 2017, as the sole Defendant. The Court ruled in favour of Ms. Elizabeth Kabera, the Plaintiff in both suits and held as follows;

"... The Plaintiff is a bonafide occupant of the said kibanja suit property and rightful owner as one of the beneficiaries of her late father's property who deserves quiet 20 *possession....*.."

The Court added on the issue of damages/remedies;

"... In our case really, the Plaintiff has not suffered any injury to warrant this Court to award her general damages but ofcourse she is entitled to costs of this suit..."

In the instant suit, in the rather difficult to read plaint, the Plaintiff's cause of action is 25 for fraud and she seeks the following remedies;

1)A declaration that;

- o The agreement between the 2nd and 3rd Defendants is null and void.
- o The title of Busiro Block 401 Plot 1035 is void.
- o The Plaintiff is entitled to the land/kibanja on which her mother's home was.
- 5 2) Orders that;
- o The title to Busiro Block 40 Plot 1035 be cancelled.

- o The Plaintiff be allowed to negotiate and deal with the 3rd Defendant on issues concerning her late mother's estate.
- o Vacant possession of the suit land.
- 10 o General damages
- o Punitive damages
- o Interest and costs of the suit.

Counsel for the Defendant contends that the suit properties in the Civil Suit 7/2004 and Civil Suit 514/2017 are one and the same. I do not agree. I believe this is a matter of 15 evidence that can only be revealed during the trial, to do so now could be prejudicial.

Secondly, the cause of action against all three Defendants is fraud, which was not pleaded by the Plaintiffs in Civil Suit 7 of 2004. In my view to succeed on a plea of resjudicata, it is imperative that the party relying on the plea demonstrate distinctly the salient similarities between the two suits. If there are facts that cannot be gathered from

20 a perusal of the pleadings and judgments of the suits in question, which facts give rise to issues for the Court's resolution, those facts and issues fall outside the realm of resjudicata. And the Court is enjoined to allow the parties to be heard on those new facts and issues.

In conclusion, I find that Civil Suit No.514 of 2017 is not resjudicata to Civil Suit 25 No. 7 of 2004. I overrule the preliminary objection and order that costs shall be in the cause.

Olive Kazaarwe Mukwaya

5 JUDGE

31st March 2021

Delivered by email to Counsel for both parties.

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