

UGANDA / JUDGMENT

Erukana v Mutyaba & 6 Others

(Miscellaneous Application 489 of 2024) [2024] UGHCLD 153 (31 May 2024)

[2024] UGHCLD 153

COURT

HC: Land Division (Uganda)

BEFORE

Naluzze Aisha Batala, J

CASE / FILE NUMBER

Miscellaneous Application 489 of 2024

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA (LAND DIVISION)

MISCELLANEOUS APPLICATION NO.489 OF 2024

(LAND CASE NO.1247 OF 2023)

ERUKANA KIWANUKA

(Executor of the Will / Estate

of the late Kezekiya Zasa Sekiwa) ::::::::::: APPLICANT

VERSUS

- 1. IVAN MUTYABA
- 2. MUGERWA SOLOMON
- 3. TAMALE JULIUS
- 4. KIMKAM PROPERTY MASTERS LTD
- 5. BISASO ISAAC
- 6. KYOBE YOWASI
- 7. THE COMMISSIONER LAND REGISTRATION ::::::::::: RESPONDENTS

BEFORE: HON; LADY JUSTICE NALUZZE AISHA BATALA RULING***Introduction;***

1. This Application is by Chamber Summons under Order 11 rule 1 and 2 of the CPR, Section 14 and 33 of the Judicature Act and Section 98 of the Civil Procedure Rules for orders that;
 - i) Civil Suit No.1247 of 2023 and Civil Suit No.590 of 2018 be consolidated.
 - ii) That further proceedings in Civil Suit No.590/2018 be stayed until further orders of this court.
 - iii) Costs of this Application be in the cause.

Background;

- 2. The Applicant filed Civil Suit No. 1247 of 2023 seeking orders and declarations that the 1st Defendant's Application for and eventual grant to him of letters of administration to the Estate of late Kezekiya Zasa Sekiwa formerly of Namugongo vide HCT-AC-N0 667 of 2012 was actuated by fraud and was therefore unlawful, an order for revocation of the grant of letters of administration to the 1st Defendant in respect of the late Kezekiya Zasa Sekiwa 's Estate on account of impersonation and illegality among other orders.
- 3. Upon filing the suit, the Applicant discovered the existence of Civil Suit No.590/2018 before this Court hence this Application.

Applicant's Evidence;

- 4. The Application is supported by the Affidavit in Support by Erukana Kiwanuka, the Applicant in which he states;
 - i) The Applicant avers that he is the executor of the will of the late Kezekiya Zasa Sekiwa(deceased, under whose estate the suit land before its mutation /subdivision fell.
 - ii) That in the bid to recover the suit land and to have it reverted back to the deceased's estate he took out a suit No. 1247 of 2023 against the 2nd, 3rd and 4th Respondents.
 - iii) That in the above suit he sought for amongst other remedies an order for the cancellation of the certificates of title illegally made out of the former deceased's original certificate of title.
 - iv) That the 2nd Respondent has since conceded his fraudulent actions in applying for letters of administration over the deceased's estate and the creation of illegal titles which currently form the basis of the claim under Civil Suit No.590 of 2018 between 1st ,4th, 5th and 6th Respondents.
 - v) He further states that there is no doubt that the subject matter in both suits is land comprised in Kyadondo Block 121.

- vi) That at the time of filing his suit, he was not aware of the existence of Civil Suit No.590 of 2018.
- vii) That both suits involve similar questions of law and fact, hence the need to consolidate.
- viii) He avers that any settlement recorded in Civil Suit No. 590/2018 without the Applicant's involvement as an interested Party will not only prejudice him but also render his claim as filed under Civil Suit 1247/2023 nugatory, moot and inconsequential.
- ix) That the order for consolidation of the two suits will ensure that there is no multiplicity of suits in respect of the same portion of the suit land being claimed amongst the Parties to this Application under the 2 different suits.
- x) That a trial of the 2 suits differently may lead to this court reaching contradictory conclusions/judgement in respect of the same suit land.

2nd respondent evidence;

5. The Application is responded to by an Affidavit deposed by Mr Mugerwa Solomon the 2nd Respondent on behalf of the 3rd and 4th Respondents; in which he states;
 - i) That the Application is barred in law, misconceived, incompetent and abuse of court process for nonattachment of the relevant annexures and preliminary objections shall be raised to that effect.
 - ii) That in reply to the Applicant, the Applicant's Civil Suit No.1247of 2023 and this Application are fraudulent schemes only intended to delay the progress of Civil Suit No.590 of 2018.
 - iii) He further states that the two suits which are sought to be consolidated involve different questions of law and facts which cannot be effectively disposed off in a single consolidated suit.
 - iv) That the Applicant's suit vide Civil Suit No.1247 of 2023 primarily seeks to have letters of Administration granted to the 2nd Respondent by the High Court Family Division revoked which is not the case in Civil Suit No 590/2018.
 - v) That the estate of the late Kezekiya Zasa Sekikwa which the Applicant claims to represent is totally different from the Estate of the late Kezekiya Sekiwa of which the 2nd Respondent was appointed as administrator.
- vi) That the suit land which is formerly Block 121 Plot 119 at Kitegombwa clearly does not form part of the purported estate of the Late Kezekiya Zasa Sekiwa but that of the late Kezekiya Sekikwa of which the 2nd Respondent is the Administrator.

5th Respondent's Evidence

- 6. Isaac Bisaso the 5th Responded gave his Evidence through his Affidavit in Reply and stated as follows;
- i) That the Application is bad in law, misconceived, incompetent and an abuse of court process.
- ii) He further avers that Civil Suit No. 590/2018 cannot be consolidated with Civil Suit No.1247 because the two suits involve different questions of law and facts, Civil Suit No.590 of 2018 seeks for specific performance while 1247/2023 seeks to have letters of Administration revoked, the Estate which the Applicant holds letters of Administration is different from the Estate which the 2nd Respondent holds letters of Administration and that the suit land which is formerly Kyadondo Block 121 Plot 119 at Kitegombwa is part of the Estate of the late Kezekiya

Sekiwa and not of the Estate of the late Kezekiya Zasa Sekikwa.

Representation;

7. The applicant was represented by Jessy Magala of M/S Maldes Advocates, Odere Anthony for the 1st Respondent but was absent, Keneth Kajeke of M/s Kajeke-Maguru & Co Advocates for the 2nd respondent and Sengendo Eric of M/S Richard Kabazi & Co. advocates for the 3rd and 4th respondents. Sengendo also held brief for Serwadda Muhsin for the 5th Respondent and Arinaitwe Sharon for commissioner Land Registration. Parties present filed their affidavits and submissions which I have considered in the determination of this application.

Issues for determination;**Whether the Civil Suit 590 of 2018 and Civil Suit No 1247 of 2023 can be consolidated?**

8. The law under **Order 11 rule 1** of The Civil Procedure Rules, is that 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 parties or at the court's own motion and at its discretion. The court must interpret and apply the Rules so as to secure the just, most expeditious and least expensive determination of every civil proceeding on its merit. The purposes of this provision are to avoid a multiplicity of proceedings, to promote the most expeditious and least expensive resolution of disputes, and to avoid inconsistent judicial findings.

9. In **Stumberg & Anor. Versus Potgieter (1970) EA 323 cited in Prince Balera Page 4 of 8 & 7 Others Versus Attorney General & 153 Ors, HC Misc. Application No. 176 of 2017** a decision by **Hon. Lady Justice Eva Luswata** wherein the factors were enumerated as follows;-
- *"Consolidation of suits...should be ordered 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 should be disposed of at the same time, consolidation should not be ordered where there are*

***deep differences between the claims and defences in each action*".**

- 10. While resolving the issue of whether Civil Suit No.590 of 2018 and 1247 of 2023 should be consolidated, it should be observed that the principles that should be considered are that there are common questions of law or facts arising, the right to relief claimed arise out of the same transactions.
- 11. In the instant case, the Applicant presents his application on the ground that the Civil Suit 590 of 2018 and 1247 of 2023 involve similar questions of law and fact.
- 12. However, the 2nd Respondent stated in his Affidavit in Reply that the two suits which are sought to be consolidated involve different questions of law and facts which cannot be effectively disposed off in a single suit. he further stated that Civil Suit 1247 of 2023 primarily seeks to have letters of Administration granted to the 2nd Respondent by the High Court, Family Division revoked which is not the case in Civil Suit 590 of 2018.
- 13. I have considered the two suits and looked at their pleadings. Civil Suit No 590/2018 is premised on actions

and orders of specific performance arising from breach of land purchase Agreement whereas 1247/2023 is premised on the Applicant herein seeking to have letters of Administration revoked on grounds of fraud and cancellation of all titles constituted on Block 121 Plot 2640.

14. In the case of ***Visare Uganda Ltd Vs Muwema & Co. Advocates & Solicitors Misc Application No.0826 and 0827 of 2023 (Consolidated)** Justice Stephen Mubiru stated that on the other hand consolidation compresses two suits into one. It allows for one set of pleadings, one set of discoveries, a common pre-trial, and a single trial, with no prospect of inconsistent findings. Further, consolidation prevents the potential for multiple suits to proceed at different paces. One of the downsides to a consolidation order is that it requires the redrafting of pleadings, as one set of fresh, consolidated pleadings is required. The test for consolidation is stricter than the test for hearing together, as consolidation involves reconstructing two or more proceedings into one proceeding. To achieve consolidation, the court may*

order that one proceeding be asserted as a counterclaim in another. This helps to accomplish the goals of efficiency, convenience and limiting the risk of inconsistent decisions.

15. In exercising its discretion under this provision, the Court will consider factors such as*: a) the extent to which the issues in each suit are interwoven; b) whether the same damages are sought in both suits, in whole or in part; c) whether damages overlap and whether a global assessment of damages is required; d) whether there is expected to be a significant overlap of evidence or of witnesses among the various suits; e) whether the parties are the same; f) whether there is a risk of inconsistent findings or judgement if the suits are not joined; g) whether the issues in one suit are relatively straightforward compared to the complexity of the other suits; h) whether a decision in one suit, if kept separate and tried first, would likely put an end to the other suits or significantly narrow the issues for the other suits or significantly increase the likelihood of settlement; i) the litigation status of*

each suit; j) whether, if the suits are combined, certain interlocutory steps not yet taken in some of the suits, such as examinations for discovery, may be avoided by relying on transcripts from the more advanced suit; k) the timing of the application and the possibility of delay; l) whether any of the parties will save costs or alternatively have their costs increased if the suits are tried together; m) any advantage or prejudice the parties are likely to experience if the suits are kept separate or if they are to be tried together; n) whether trial together of all of the suits would result in undue procedural complexities that cannot easily be dealt with by the trial judge, and; o) whether the application is brought on consent or over the objection of one or more parties.

16. In my view, the two Civil suits are premised on different questions of law and facts. In line with the grounds and considerations for consolidation of suits, this Application does not pass the test as the two suits cannot be effectively disposed off in a single consolidated suit.

- 17. Accordingly, this Application is dismissed with no orders as to costs.
- 18. Each suit shall proceed to be heard independently.

I SO ORDER.

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NALUZZE AISHA BATALA

JUDGE

31st /05/2024

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