

UGANDA / JUDGMENT

Kalule and Another v Nagawa
(Civil Suit 150 of 2022) [2024]
UGHCLD 161 (17 June 2024)
[2024] UGHCLD 161

COURT
HC: Land Division (Uganda)

BEFORE
Nkonge, J

CASE / FILE NUMBER
Civil Suit 150 of 2022

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

LAND DIVISION

CIVIL SUIT NO. 150 OF 2022

1. KALULE FAROUK KASULE :::::::::::::::::::::::::::::::

2. KALUNGI YUDAYA

VERSUS

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NAGAWA SARAH KASULE:::::::::::::::::::::::::::::

Before: Lady Justice Alexandra Nkonge Rugadya

decimals from Block 38, plot 302, land at Makerere.

PRELIMINARY OBJECTION:

Introduction:

The main suit was filed by the plaintiffs, Kalule Farouk Kasule and Kibirige Yudaya against the defendant a one Nagawa Sarah Kasule. The basis of the dispute is that a contract was entered into between the plaintiffs and the defendant on the 23rd day of May 2012 for the sale of land, approximately 2

The instant suit was filed and endorsed by this court on the 28th day of March, 2022. The plaintiffs sought among others, a declaration that the contract dated 23rd May, 2012 between the 1st plaintiff and the defendant was and is still void

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abnitio and is unenforceable; an order that a duplicate certificate of title of land comprising Kibuga Block 38 Plot 302 Land at Makerere belongs to the plaintiffs as registered proprietors; general damages; interest and costs'

At the preliminary stage of the trial, the defendants raised an objection claiming that this was an action founded on contract and could not be brought after the expiration of six years from the date on which the cause of action arose. He cited the provisions of section 3(1) of the Limitation Act to support his point.

A preliminary objection as raised in this case is one that consists of points of law which arises by clear implication out of the pleadings and which may dispose of the suit. [Yaga Fara Jalid as Obur Ronald & 3 others CA. No' 0081 of 2018].

Consideration of the issue by court:

By way of a brief background, it is important to note at this stage that about the same time that this suit was instituted, the plaintiffs in this suit had filed Civil Suit No. 749 of 2024 in Family division against one Jaffar Kasule' 15

Later on, this court presided over by His Worship Okumu Jude Muwone upon application by the plaintiffs (applicants) herein vide HIA No. 734 of 2024 arising from this very suit, made an order for the production and deposit in court of the duplicate certificate of title for the land measuring approximately 0.08 h comprised in Kibuga Block 38 plot 302 land at Makerere, within a^a period of 5 working days on receipt of the said court order. This is the same title which is the subject of the dispute in both suits.

The orders by His Worship were granted on dated 5th March, 2024. It is not yet

revealed to court if the said orders made under HIA No. 734 of 2024 were complied with by the defendant in this suit, who is currently in possession of the title. t5

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court takes due cognizance of the fact that the said application was made after the defendant had already filed this preliminary objection and before this court had decided on the issue as to whether the plaintiffs' action was statute barred.

His worship in that ruling referred to MA No. 424 of 2022, pending before the Family division arising from civil suit. No. 149 of 2022. The order by him indicates that the title was to be presented in that suit as proof of the applicants' legal ownership of the suit land.

When the same parties appeared in this court on 16th November, 2023, court was informed that although the plaintiffs were the same, the defendants in the two suits were different and so were the causes of action'

That the defendant in the present suit is a step mother to both the plaintiffs in this suit and the defendant in the suit before the family division where the same plaintiffs had filed an action in trespass against their step brother.

In the suit pending in this division, the declaration is sought by the same applicants/ plaintiffs that a contract dated 23rd May, 2012 between the two sides was void ab initio, unenforceable. 15

The plaintiffs seek an order in this court for the defendant to surrender the duplicate certificate of title for the land comprised in Kibuga Block 38 plot 302, land at Makerere to them as the registered owners'

The fear of the plaintiffs is largely premised on both the physical possession of the land and custody of its title by the defendants and the likelihood that it would be tampered with, mortgaged or otherwise dealt with, without the plaintiffs' knowledge and consent' 20

This court cannot rule out the possibility that a decision made by this court is likely to affect the defendant in that suit who is not party to this suit' Equally, a decision made by the court in the Family Division is also likely to affect the defendant in this present suit who is not party in the suit pending in the Family Division. The danger also lies in the possibility not so remote that the 25

two divisions may issue conflicting orders without according the respective defendants a fair hearing.

Accordingly, the following orders are issued:

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- 1. Although the causes of action and the defendants in both suits appear to be different, it is clear that the subject of the disputes relates to the same portion of land; and therefore the facts surrounding the acquisition and possession of the suit land relate to the same questions of ownership.

- 2. The Family Division is set to hear the matters pending before it 10 which touch on the ownership and physical possession of the $\mathcal{L}$ suit land/property, which the plaintiffs claim as their home in an action for trespass.
- This court is also set to hear and determine the validity of the 15 contract between the same plaintiffs and their step mother who according to the plaintiffs has refused to release the title for the suit land.
- The question which court must resolve first is therefore whether 20 the plaintiffs had any locus standii to enter into a contract with their step mother in 2012 in respect of the suit land whose ownership is still a subject of an unresolved dispute with another party before another court in Civil Suit No. 149 of 2022; and who is not party to the instant suit. 25
- 3. Since any decision made in one suit may substantially affect the rights of the parties in the other suit, in the interest of $\mathbf{f}$ justice, the two suits are to be amalgamated/consolidated; and

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are to be handled by the same division which is dealing with the issue of initial ownership vide Civil Suit No. 149 of 2022.

- 4. It is before that court hearing the consolidated suit that the $\mathcal{L}$ preliminary objection raised herein shall be raised by the defendant.
- 5. Each party to bear their own costs.

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Alexandra Nkonge Rugadya

Debuard by email 18/6/2024

Judge

17th June, 2024

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