

UGANDA / JUDGMENT

Kasule & Another v D.A.P Custodian Board & Another (Civil Suit 751 of 1991) [1992] UGHC 65 (20 May 1992)

[1992] UGHC 65

COURT
High Court of Uganda

BEFORE
Tsekooko, J

CASE / FILE NUMBER
Civil Suit 751 of 1991

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

| "civil
OF~1~99~
751
SUIT
NO, | |
|-----|-----| | 1.
HAWA KASULE
J |
PLAINTIFFS. | | 2.
KASULE
NURU
5
VERSUS | | 1.
D. A.
P.
CUSTODIAN
BOARD
J | DEFENDANTS. | | 2.
I. G.
PATEL | | | BEFORE:-

Justice
Honourable
J. W. N.
Tsekooko
Mr.
The | |

ORDER

Mr. Lubega Matovu, learned counsel for the plaintiff at the resumed hearing of this suit on Sth May, ¹⁹⁹² orally applied for consolidation of this suit with another (HCCS. No. 752 of 1991*) This application could rightly be called on after thought. However the reasons are that the plaintiffs are the same in both suits. The first defendant is the same in the two suits. Questions of lav/ to be- determined are the same in both suits. Mr. Twimomugisha who represents the defendants in both suits had no objection to the application.

Order 10A of the Civil procedure Rules deals with consolidation of suits.

Its two rules are short and I would produce them.

Rule 1: "Where two or more suits are pending in the same court in which the same or similar questions of law or fact are involved, the court may, either upon the application of one of the parties or of its own motion, at its discretion, and upon such terms as may seem fit,

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- (a) Order a consolidation of such suits, and
- (b) direct that further proceedings in any such suits be ----- sl-ayed—un-t-i-L-f-u4har—ord^e/_n-----

2. Applications Under this order shall be by summons in Chambers".

The rules are clear enough.

Mr. Lubega. should have actually made the application by chamber summons and preferably before the hearing in the present suit (HCCS .751/91)- had begun.' He however asked for the court to waive these requirements when he made his oral application. And as I have said earlier this application appears to have been an afterthought which sprung up when HCCS No. 752/91 was before Okalebo, Ag. J.

Mr. Twinomugisha concurred in Mr. Lubega's submissions,

Other than the fact that the second defendant in the first suit is different from the second defendant in the second suit, the complaints in both suits are actually drafted in identical terms. So are the Written Statements of Defence.

There is no doubt on my perusal of paragraphs ⁴ to ¹² in both complaints that the same or similar questions of law or fact are involved. For instance paras ⁴ and ⁵ in both suits are drafted thus:-

"⁴ The 1st and 2nd plaintiffs¹ claim against the defendants is for recovery of property in their respective names comprised in plots 533 and 535 Block 29 situated at Mulago general damages mesne profits and the cause of action arose as follows

- 5. The plaintiffs are the daughters of the late Musa Kasule who was the original owner of the mailo land referred to

..... /3

herein above who on the 22nd day of June, 1967 or thereabouts leased the suit premises comprised in Block ²⁹ Plots 535 and 535 leasehold register Vol. 652 Folio ¹²/_{sup} situate at Mulago Kyadondo to one Serwano Bulunga Kigozi. ^A photostat copy of the lease is attached «•"

In paragraph ⁸ of each complaint it is alleged that the transfer was void ab initio because of lack of consent from the controlling authority. The transfer here refers to the second defendant in each suit.

It is abundantly clear that the conditions stipulated by 0.10A Rule ¹ are present in both suits.

The application was made after the first plaintiff in the first suit (who is again the first plaintiff in HCCS 752/91) had finished testifying.

But I don't think that that aspect would cause any injustice if I grant the application. If the application is granted justice would better be served in that the disposal of the two suits would be expedited if they are consolidated. My discretion in this matter is only subject to the provisions of Rule ² of the same order.

As the hearing had started I shall use my discretion and inherent powers and accept the oral application. There would be no prejudice caused to any party by not following Rule 2. And see the case of General Manager E. A. P. & H. A. Vs. Thierstein /19687 EA. 55[^] which deals with belated amendment but I think the reasoning applies in a case such as the present one.

..... A

In the result I order that the two suits (HCCS 75[^]/91 no further or separate proceedings should be taken in HCCS 752/91 until further orders of this court. HCCS 752/91) be consolidated and heard together. Natuarally

Costs of this application shall be in the cause.

TSEKOOKO JUDGE 20/5/1992.

21/5/1992 at 9.05 a,m Mr. Lubega for plaintiffs. Plaintiffs present Mr. Twinomugisha for defendants. Defendants not present. No Interpreter. Order delivered in presence of above though the interpretation

was absent.

JUDGE J.y[^]N. TSEKOOKO

21/5/1992

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