

UGANDA / JUDGMENT

Kiggundu and Others v Kibumbi and Another (MISCELLANEOUS APPLICATION NO.3539 OF 2023) [2024] UGHC 1217 (30 September 2024) [2024] UGHC 1217

COURT
High Court of Uganda

BEFORE
Nabakooza, J

CASE / FILE NUMBER
MISCELLANEOUS APPLICATION NO.3539 OF 2023

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

MISCELLANEOUS APPLICATION NO. 3539 OF 2023

- 1. KIGGUNDU WILLIAM CHARLES
- 2. HENRY SSALI
- 3. BAZANYE LIVINGSTONE
- 4. NABAYINDA RUTH ::::::::::::::::::::::::::::::

VERSES

- 1. KIBUMBI ALI
- 2. BYAKATONDA DEUS ::::::::::::::::::::::::::::::

HON. LADY JUSTICE NABAKOOZA FLAVIA. K BEFORE:

RULING

This application was brought under Section 98 of the Civil Procedure Act, Order 6 rules 10, 30 and 31, Order 13 rules 6 and 9, and Order 52 rules 1 and 2 of the Civil Procedure Rules seeking for orders that:

- a. The 1st and 2nd Respondent's written statements of defence filed on 3rd and 1st November, 2023 respectively in Civil Suit No. 1185 of 2023 be struck out for offending Order 6 rules 8, 10 and 30 of the Civil Procedure Rules.
- b. Judgment be entered against the Respondents/Defendants for liability. In the alternative but without prejudice;
- c. The judgement be entered on admission against the Respondents.
- d. The costs of the Application be provided to the Applicants.

The grounds of the application are contained in the Affidavit in support of the 1st Applicant (Kiggundu William Charles) with authority from the 2nd, 3rd and 4th Applicants. Briefly, they are.

That the Applicants filed CS No. 1185 of 2023 against the Respondents together with others wherein they sought for; cancellation of sale and transfer of Instrument No. WAK-00113692 dated 31/1/2017 which was illegally used to enter the name of the 1st Respondent as Administrator of the estate of the Late Alisitaliko Kirimumunda on land comprised in Busiro Block 543-544 Plot 15 at Lugo; order for cancellation of transfer

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instrument No. WAK-001 17652 dated 23/12/2017 which was illegally used to enter the name of the 2nd Respondent as proprietor from the 1st Respondent; and cancellation of all illegal subdivisions and subsequent transfers by the 2nd Respondent.

The Applicants averred that the Respondents, in their written statements of defence, made general denials which offend the Civil Procedure Rules, and that the written statement of defence ought to be struck off the record. That the Respondents made admissions to the Applicants' claims and sought for court to grant the plaintiffs' prayers in the suit, hence judgment on admission.

35 40 The Respondents filed their respective affidavits in reply. The 1st Respondent admitted to filing a written statement of defence wherein he denied all the allegations stated against him. That the property comprised in Block 543-544 Plot 15 at Lugo was illegally registered in his names as an administrator of the estate by unknown persons. That he has never participated in any illegal dealings; does not know the Applicants' property and he is not aware of the person who falsified his national identity card and presented the same to the Ministry of Lands. That he is not aware of the claims against him, he does not object to judgment being granted to the Applicants nor striking out his defence to enable the Applicants obtain their land. Additionally, that he does

not object to the Applicants' prayers in the instant application.

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The 2nd Respondent deposed that the claims that he purchased land comprised in Block 543 -544 Plot 15 at Lugo from Kivumbi Ali are matters not within his knowledge. That he does not know Kivumbi Ali nor where the land is situated. That he does not object to the grant of the declarations and orders sought by the Applicants and that the subdivisions and subsequent transfers attributed to him should be cancelled since he has never signed any transfer form or mutation form that led to the said transactions. Further, that he has been dragged to court on what is unknown to him and doesn't object to striking out his written statement of defence.

Representation: The Applicants were represented by Counsel Daniel Byaruhanga while the 2nd Respondent was represented by Counsel Musinguzi Joshua. Both counsel filed written submissions which shall be relied on in this ruling.

60 Issues for determination:

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The Applicant's counsel raised and resolved two issues to wit; -

- 1. Whether the written Statement of Defence filed by the Defendant/Respondent offends Order 6 Rules 8, 10 and 30 of the Civil Procedure Rules?
- 2. Whether a judgment on admission should be issued against the Respondents?

Issue No.1: Whether the written Statement of Defence filed by the Defendant/Respondent offends Order 6 Rules 8, 10 and 30 of the Civil Procedure Rules.

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Counsel for the Applicants submitted that the Civil Procedure Rules makes it mandatory for a defendant to specifically deny the claims of the plaintiff in the written statement of defence. That the 1st and 2nd Respondent did not specifically deny the Plaintiffs claims but rather had general denials. That the responses should be intelligible, clear and precise and should give an answer to an allegation in the claim. That the evasive or general denials renders the defence incurably defective and cannot be cured by Article 126 (2)(e) of the Constitution.

80 On the issue of judgment on admission, Counsel cited Order 13 rule 6 of the Civil Procedure Rules, which provides that:

> Any party may at any stage of a suit, where an admission of facts has been made, either on the pleadings or otherwise, apply to the court for such judgment or order as upon the admission he or she may be entitled to, without waiting for the determination of any other question between the parties: and the court may upon the application make such order, or give such judgment, as the court may think just.

90 95 He submitted that the Respondents in their written statement of defence, specifically paragraphs 3, 15, 6 and 7, admitted the Plaintiffs' claim under Paragraph 4 of the plaint. Counsel relied on the cases of; *McSessers Equator Touring Service Ltd Vs City Council of Kampala* Misc. Application No. 40612013, *Central Electrical International Ltd Vs Eastern Builder & Engineers* MA No. 17612008, *Excel Constructions Ltd Vs AG HCCS* No.3007 and *John Peter Nazareth Vs Barclays Bank International Ltd* E. A. C. A 39 of 1976 (UR) where it was held that an admission of facts can be made either on the pleadings or otherwise; and that the rule applies to any party to the suit whether the plaintiff or defendant.

The Applicants Counsel argued that the Defendants admitted to the claims in the plaint and made out a case for grant of judgment on admission.

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In reply, Counsel for the 2nd Respondent cited *Ecobank Uganda Limited Vs Kalson's Agrovert Concern Ltd & Anor* HCCS No. 57312016, *Turkish Airlines Inc Vs KK Fresh Produce Exporters Ltd & Ors*, MA No. 755 of 2023 and *Peter Jogo Tabu Vs The Registered Trustees of the Church of the Province of Uganda* ICCA ¹⁶¹²⁰¹⁷ and submitted that there are 3 options in cases of this nature to wit;- striking out pleadings or any part of it: deem the general denials or evasive denials as admissions; or order the defendants to yield further and better particulars under Order 6 rule 4 and order an amendment of pleadings under Order 9 rule 19 to enable a party yield clear and precise responses. He prayed that the Applicants be granted judgment on admission; the matter set down for formal proof; and that each party bears its own costs'

Resolution

I have carefully considered the law and the pleadings of the parties. Order 6 Rule 8 of the Civil Procedure Rules provides that:

120 It shall not be sufficient for a defendant in his or her written statement to deny generally the grounds alleged but the statement of claim, or for the plaintiff in his or her written statement in reply to deny generally, but, found alleged in a defense by way of counterclaim, but each party must deal specifically with each allegation of fact which he or she does not admit the truth, except damages. 115

Further, Rule 10 provides that:

When a party in any pleading denies an allegation of fact in the previous pleading of the opposite party, he or she must not do so evasively, but answer the point of substance. Thus, if it is alleged that he or she received a certain sum of money, it shall not be sufficient to deny that he or she received that particular amount, but he or she must deny that he or she received that sum or any part of it, or else set out how much he or she received. If the allegation is made with diverse circumstances, it shall not be sufficient to deny it along with those circumstances.

To determine if a written statement of defence contains general denials, the court examines the said pleading vis-à-vis the allegations contained in the Plaintiff.

'the Plaintiffs' claim is premised on fraud and illegalities purportedly committed by the 1st and 2nd Respondents together with the 1st Defendant (the 'Commissioner Land

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Registration). The Plaintiffs allege, under paragraph 5 (d-1) of the plaintiff, that the 1st Respondent is a stranger to their grandfather's estate, but obtained Letters of Administration from Nakawa High Court vide AC No. 1213 of 2015 and irregularly became registered on the suit land as an administrator of the estate of the late Alisitaliko Kirimumundu on 18th 11/2016. That he later sold the suit land to the 2nd Respondent who got registered on 23rd 03/2011. The 2nd Respondent then caused sub-divisions and created various plots which were transferred to the respective Defendants in HCCS No. 118512023. That they complained to the Registrar of the High Court, who established that the Administration Cause Number relied on by the 1st Respondent does not exist. Further, that the 3rd to 9th Defendants in HCCS No. 1185 of 2023 entered into transactions with the 2nd Respondent well knowing that the 2nd Respondent had illegally procured the suit land from the 1st Defendant/Respondent who did not have genuine Letters of Administration, and hence cannot claim as bonafide purchasers.

Counsel for the parties in this application agree, their submissions, that the two written statements of defenses do offend the provisions Order 6 rule 8 and 10 of Civil Procedure Rules.

In defence, the 1st Respondent, under paragraphs 2 and 3, denied the contents of paragraph 4 (ii) (iv) (vii), (xi), (xii) (xiii) and (xiv) and paragraph 5(1), (g) and (l) of the plaintiff. Under paragraph 4, 5, 6 of the same, he denied indulging in the affairs of an estate he did not know about and knowing the 2nd Respondent or meeting him in any transaction touching the suit land. Further, under paragraph 7 and 8 of his defence, he partly admitted to the contents of paragraphs 10, 11. 11 (vi), (ii), (iii) and (i), and denied paragraph 12, of the plaintiff in toto. Lastly, under paragraph 10, he admitted to paragraphs 16 and 17 of the plaintiff and stated that he has no claim to the suit property.

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170 The 2nd Respondent also denied the contents of paragraph 5(g), (h), (i) and (k) and admitted paragraph 5 (l) of the plaint under paragraph 3 of his written Statement of defence. He pleaded that he has never met the 1st Respondent nor purchased any land from him to sign transfer forms in his favor. That he has never carried out any subdivision and transfer of the suit land in toto to the 3rd to the 9th defendants' names who are unknown to him. Under paragraph 5 of his defence, he partly admitted paragraphs 10, 11, 11 (iii), (iv) and (v), 14 and 15, and denied paragraph 12 in toto, of the plaint.

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1. In *Peter Jogo Tabu v The Registered Trustees of the Church of the Province of Uganda*, supra, cited by the 2nd Respondent's Counsel, my brother Mubiru J., stated that:

The combined effect of Order 6 rules 3, 8 and 10 of The Civil Procedure Rules is that any fact stated in the plaint, if not denied specifically or by necessary implication or stated to be not admitted in the pleading of the defendant, is treated as admitted. A general denial or an evasive denial is not treated as sufficient denial and, therefore, the denial of allegations of facts made in the plaint, if it is not definite, positive and unambiguous, is treated as admitted under those rules.

Further, in *Byaruhanga Africano Vs. Uganda Electricity Distribution Co. Ltd (UDDCL)*. MA No. 061 of 2022,, my brother Wagana J., pointed out that:

It is not the defendant is supposed to do is to put up a defense requiring the plaintiff to prove his case. He or she is not under any legal obligation to plead facts. As long as he denies the plaintiff's claim as not being true. That is sufficient to put the plaintiff to the task to prove his claim.

In view of the above authorities, considering that the 1st Respondent denied being involved in the transfer of the suit land to his names and later to the 2nd Respondent and the 2nd Respondent made a similar denial, it is clear that the Respondents put up defenses requiring the Plaintiffs to prove that it was the 1st and 2nd Defendants who fraudulently dealt with the suit.

200 The Respondents' defenses cannot be struck out simply because they denied knowing each other or involving in the transactions touching the suit land. Had they denied the names of persons mentioned on the instruments of transfer of the suit land from the former registered proprietor Atisitaliko Kirimundundu, that would have been sufficient. However, the Respondents did not deny their names as were used during the transfer. Therefore, their participation is important and must be proved by the Plaintiffs/Applicants to the required standard during trial. Accordingly, I find that the Respondents established their respective defence to the suit and that the same are not general or evasive. This answers the 1st issue in the negative.

Issue 2. Whether a judgment of admission should be issued against the respondents? 210

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In The Board of Governors Nebbi Town S. S. S Vs .faker Food Storcs Limited (MISCELLANEOUS CML APPLICATION No. 0062 OF 2016)' my brother Mubiru J noted that:

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...thejudge's discrelion to grant judgment on admission o/ fact under the law is to be exercised only in plain cases.'[he admission should be unambiguous, cleor, unequivocal and positive. IYhere the alleged admission is nol clear and speci/ic, il may not be appropriate to loke recourse to lhe provisions oJ Order l3 rule 6 ofThe Civil Procedure Rules.

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According to the plaint, the suit land was transferred from the names of the late Alisitaliko Kirimumunda by the l'l Respondent as an administrator of the estate and later to the 2'd Respondent under a sale agreement. It is further alleged that the 2nd Respondent then created sub-divisions as follows:

- a. Under instrument No. WAK 00127355 crcated plots 463,464 and 465. Plot ⁴⁶³ was transferred to the 3'd Defendant then to the 4tl'defendant.
- b. Plot 464 was subdivided to create plots 651, 652,653 and 654. Plot 651 was transferred to the 5th Defendant. Plot 652 and 653 were transferred to the 5'h Defendant.
- c. Plot 464 was transferred to the 5rl'defendant and later transf'erred to the 6tl' Defendant.
- d. Plot 654 was transferred into the names of the 8'h defendant who further subdivided it into plots 661 and 662. Plot 661 was transferred into the 9th Defendants' names.

240 The essence of the above summary is that the l't and the 2nd Respondents are no longer registered proprietors ofthe suit land. The suit land is currently registered in the names of the 3'd to 9th Defendants in FICCS No. 1 I 85 o12023 per paragraphs 5 (h), (i), (i) and (k) of the ptaint; and the 3'd, 4dr and 6th defendants' written statements of defense were uploaded on the Electronic Court Case Management Information System(ECCMIS). Therefore, the l't Respondent/ Defendant's prayer under, paragraph 8 of his written statement of defbnce, that his name be cancelled to enable the Applicants regain their land is misleading. They cannot admit to

cancellation of title for the land which is not registered in their names, the land is currently registered in other parties.

In addition, the Respondents partly admitted to the allegations of fraud or illegalities as pleaded under paragraph I I (ixii) (iii), and (iv) of the plaint. This left the unadmitted part

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of the plaint to be proved by the Plaintiffs. Therefore, it would be inappropriate to enter a judgment on admission against the Respondents.

Consequently, the court declines to enter a judgment on admission against the 250 Respondents. This answers the second issue in the negative as well.

In conclusion, the application is hereby dismissed. The suit shall be set down for formal proof. Costs be in the cause.

Signed, dated and delivered at Kampala this. 30 day of September 2024.

Nabakooza Flavia, K Judge

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