

Background:

- [2] The Applicant filed **Civil Suit No. 18 of 2017** against the Respondent in the Chief Magistrate's Court of Hoima at Hoima wherein he sought inter alia, orders for a declaration that he is the rightful and lawful owner of the suit land comprised at Nsozi LC, Bubaare Parish, Kyangwali Sub-County, Buhaguzi County, Hoima District.
- [3] The main issue for determination is **Civil Suit No. 18 of 2017** was whether the Applicant was the rightful owner of unregistered suit land. The

Chief Magistrate of Hoima while determining the matter found and held as follows:

[4] At page 1 of the judgment:

"On 30th April 2015, the Plaintiff purchased the said portion of kibanja at Nsozi LC I, Buhaguzi County, Hoima District, from the 3rd Defendant, Mr. Ayebale Richard. Ayebale Richard's predecessor in title and former proprietor is the 2nd Defendant, Baguma Kolantino. He also testified that the said Baguma had shared the land with Kabibi Jane and a straight line was put in the middle for purposes of boundary, which straight line exists to date. The neighbouring land was apportioned to the 1st Defendant, Kabibi Jane, she sold her portion to Margret Kyenkya and left."*

[5] At page 2 of the judgment:

"The 1st and 2nd Defendants filed their written statement of defence and 3rd defendant never filed a written statement of defence.... The 1st and 2nd Defendants agreed to share the suit land which was measuring 1100 acres and the 1st Defendant took approximately 700 acres while the 2nd Defendant took approximately 400 acres...."*

[6] At pages 8 & 9 of the judgment, court held:

"The [The Respondent] relying on the approximation of 700 acres apportioned to her yet when the services of surveyor are engaged by her, the actual size was found to be 643 acres. This in evidence meant her actual size of land to be 643..... On whether the land is in the village Nsozi or Kyamugasa is a question of fact. The parties knew where the suit land was and court came about to visit locus in the presence of all the parties. It is also a question of fact because new villages are being created....."*

"In the premises, I proceed to resolve the first issue in the affirmative. The unregistered suit land belongs to the Plaintiff since ownership had passed from 2nd Defendant to 3rd Defendant and consequently Plaintiff".*

- [7] The Respondent appealed to the High Court against the decision of the Chief Magistrate's Court decreeing the suit land to the Applicant vide **H. C. C. A No. 25 of 2019** which was dismissed by Gadenya. J.

- [8] The Respondent filed **H. C. M. A No. 05 of 2023** for orders for review, set aside and substitute the judgment of the High Court with an order decreeing the suit land to the Respondent. It was also dismissed with observation, inter alia, that the Respondent's registration on the certificate of title to the suit land comprised in **FRV MAS 193, Folio 18 Buhaguzi, Hoima District, Block 2 Plot 344 at Kyamugasa** constituted contempt of Court, for the Applicant had titled a portion of the unregistered land of about **50 acres** claiming that she sold only **643 acres** to **Kyenkya Margret** out of the **700 acres** she initially got when she shared the land with **Baguma Kolantino**. The unregistered suit land which the Respondent titled in her names had already been decreed to the Applicant vide Chief Magistrate's Civil Suit No. 18 of 2017 and this was confirmed on appeal vide H. C. C. A. No. 25 of 2019 when Gadenya, J. dismissed the Respondent's appeal.
- [9] The Respondent has now filed **H. C. C. S. No. 110 of 2023** against the Applicant wherein she seeks to be declared as owner of land comprised in **FRV MAS 193, Folio 18 Buhaguzi, Hoima, Plot 344, Block 2 at Kyamugasa** which according to her is outside the suit land that was litigated over in the **Chief Magistrate's Court of Hoima, Civil Suit No. 18/2017** – thus;

"The suit land measuring approximately 50 acres belongs to the Plaintiff which land the Plaintiff remained with after selling part of it to Kyenkya Margret."

The approximate 50 acres the Respondent claims in the present suit is the difference of the 643 acres the Respondent sold to Ms. Kyenkya Magret and the 700 acres her initial share which she claims remained and was therefore retained as hers.

- [10] It is the contention of the Respondent that the matter in issue is **Civil Suit No. 110 of 2023** and the parties are directly and substantially similar to those in **Civil Suit No. 18 of 2017** which have been finally and conclusively determined by the **Chief Magistrate's Court in Civil Suit No. 18 of 2017, the High Court vide Civil Appeal No. 25 of 2019 and this Court in Misc. Application No. 5 of 2023**. That the present suit **Civil Suit No. 110 of 2023** is therefore **resjudicata** and the Respondent/Plaintiff has no cause of action.

Counsel legal representation:

- [11] The Applicant was represented by **Mr. Natweta Ronald** of **Ms. Natweta & Co. Advocates, Kampala** while the Respondent was represented by **Mr. Simon Kasangaki** of **Ms. Kasangaki & Co. Advocates, Masindi**. Both Counsel filed their respective submissions for consideration of this Court in the determination of this application.

Issues for determination:

(1) Whether Civil Suit No. 110 of 2023 is *resjudicata*

- [12] The doctrine of **resjudicata** is set out in **S.7 of the CPA** as follows:

"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 has been consequently raised, and has been heard and finally decided by that court."

[13] This Court in the case of **Pan Africa Impex (U) Ltd Vs Okori HCMA No. 3 of 2020** citing the case of **James Katabazi & Ors Vs Secretary General of the East African Community & Anor, C. A. C,J Ref. No. 1 of 2007** summarised the doctrine of **resjudicata** as follows:

(i) The matter must be directly and substantially in issue in the two suits. (ii) The parties must be the same or the same parties under whom any of them claim, litigating under the same title.

(iii) The matter must have been finally decided in the previous suit.

[14] The test whether or not a suit is barred by **resjudicata** appears to be that the Plaintiff in the 2nd suit was trying to bring before the court in another way and in the form of a new cause of action, a transaction which he has already put before a court of competent jurisdiction in earlier proceedings and which has been adjudicated upon. If so, the plea of **resjudicata** applies not only to points upon which the first court was actually required to adjudicate but to every point which properly belongs to the subject of litigation and which the parties exercising reasonable diligence might have brought forward at the time, see **Kamunye & Ors Vs The Pioneer General Assurance Society Ltd [1971] E. A 263**.

- [15] Counsel for the Respondent submitted that in the instant case, the Respondent/Plaintiff did not litigate with the Applicant/Defendant over the suit land comprised in **FRV MAS 193 Folio 18 measuring approximately 17.2760 hectares (approx.50 acres), Buhaguzi, Hoima District, Plot 344, Block 2 at Kyamugasa**. That the subject land measuring 50 acres was initially part of the Respondent's total land measuring approximately 700 acres which was the Respondent's share on the 1,100-acre piece of land which she acquired together with **Baguma Kolantino** who acquired 400 acres. That the Respondent applied for a certificate of title for her remaining portion of land which is now the subject matter and the said title was granted under **FRV MAS 193 Folio 18 measuring approximately 50 acres**.
- [16] In this case, the Applicant adduced copies of the pleadings and the judgment in the **Chief Magistrate's Court Civil Suit No. 18 of 2017**, a judgment in **High Court Civil Appeal No. 25 of 2019** and a ruling in **High Court M. A No. 05 of 2023** to prove to court that the present suit, **Civil Suit No. 110 of 2023** is **resjudicata**. That the matter which is directly and substantially in issue in the present suit had earlier been tried and finally disposed of in the former suit.
- [17] Indeed, as held in **Lt. David Kabareebe Vs Major Prossy Nalweyiso, C. A Civil Appeal No. 34 of 2003**, to give effect to the plea of **resjudicata**, the matter directly and substantially in issue must have been heard and finally disposed of in the former suit. For the doctrine to apply there must have been a decision on the merits of the case.

- [18] In the instant case, it is not in dispute that the previous suits, **Chief Magistrate's Court Civil Suit No. 18 of 2017** and **High Court Civil Appeal No. 25 of 2023** are decisions on the merits of the case. It is also not in

dispute that the parties are also the same as those in the present suit, **Civil Suit No. 110 of 2023**. What the Respondent contends however is that the suit land in the present suit comprised in **FRV MAS 193 Folio 18 measuring approximately 17.2760 hectares (Approx. 50 acres), Buhaguzi Block 2 Plot 344 at Kyamugasa, Hoima District** was not litigated with the Applicant in the previous suits.

[19] It is noted that the suit land in the **Chief Magistrate's Court Civil Suit No. 18 of 2017** was described as **unregistered land situate at Nsozi L. C, Bubaare Parish, Kyangwali Sub-County, Buhaguzi County, Hoima District**. According to the Respondent, the suit land was her **700 acres** share on the **1,100 acre-land** which she acquired together with **Baguma Kolantino** who got **400 acres**. The **Chief Magistrate's Court** found that the Respondent sold off her share of **700 acres** to one **Kyenkya Margaret** and therefore, what she disposed of did not form part of the suit land which court decreed to the Applicant.

[20] At page 17 of the judgment of Gadenya, J. in H. C. Civil Appeal No. 25 of 2019 found that:

".... It is not in dispute that the Appellant (present Respondent) and the 2nd Defendant (Baguma Kolantino) in the lower court divided the original unregistered land between themselves..... However, what is in dispute is whether there was a surveyor at the point of division of the unregistered land to enable them take the exact acreage that the Appellant claims between the two parties and whether the Appellant sold off her land to Margret Kyenkya or not."*

[21] At page 18 of the judgment, court held thus;

"From the evidence adduced it is evident that in 2013 when the land was divided between the parties, the subdivision was based on a straight line that was agreed upon by the parties in as much as the parties referred to the area in acres. This estimation was clearly based on approximation and not a survey as purported by the Appellant."*

[22] It is clear from the pleadings and the holding of the appeal court that much as the Appellant (the present Respondent) claim that a survey was engaged and surveyed the Appellant (the present Respondent) portion as being **700 acres** and of **Baguma Kolantino** as **400 acres**, there was no evidence of survey adduced in court to that effect. The true position of the matter is that the reference to the **700 acres** for the Respondent and **400 acres** for **Baguma Kolantino** was a mere estimation.

- [23] Indeed, as per the sale agreement on record attached to the plaint in the present **H. C. C. S. No. 110 of 2023**, the Respondent disposed of her estimated **700 acres** to **Kyenkya Margret**. The Respondent's claim therefore that she remained with land measuring **approximately 50 acres** now comprising the suit land in the present **Civil Suit No. 110 of 2023** is a lie and without basis. She disposed of her entire share of **approximately 700 acres** to **Kyenkya**

Margret. Therefore, her subsequent purported title for the **17.2760 ha (50 acres)** comprising of the present suit land as her remaining portion of land after the sale was fraudulent and contempt of court since the Chief Magistrate's Court had decreed the suit land to the Applicant as later on was confirmed by the High Court on appeal. This was also the finding of this court in **H. C. M. A. No. 05 of 2023 (Arising from H. C. C. A No. 25 of 2019)**

- [24] In conclusion therefore, parties in the **Chief Magistrate's Court C. S. No. 18 of 2017**, and **H. C. C. A No. 25 of 2019** and **H. C. M. A. No. 05 of 2023** are the same and the subject matter of dispute, land comprised in **FRV MAS 193 Folio 18, Buhaguzi, Block 2 Plot 344 at Kyamugasa** in the present suit **No. 110 of 2023** is the same that was adjudicated upon and finally determined in the previous suits. The reference of the location from "**Nsozi L. C.**" to **Kyamugasa" Village** was explained by the lower court, relying on the uncontested evidence before it to had been a result of the creation of new villages, an explanation which was confirmed by the High Court on appeal.
- [25] In the premises, I hold that the matter directly and substantially in issue in the present **H. C. C. S No. 110 of 2023** was heard and finally disposed of in the former lower court suit and the High Court on appeal on merit. I accordingly find the present suit **resjudicata.** The Plaintiff's (Respondent in the present application) rights were conclusively adjudicated upon and determined by courts of competent jurisdiction, she is barred from resurrecting the same rights for adjudication. In the present **H. C. C. S. No.**

110 of 2023, the Plaintiff (Respondent in the present application) is trying to bring before the court in another way and in the form of a new cause of action, a transaction in earlier proceedings which has been adjudicated upon.

- [26] The issue at hand is the premises found in the affirmative. The finding of this court on this issue disposes of the entire application. The application is therefore in the premises accordingly granted with the following orders:
- (a) The Respondent's plaint in **H. C. C. S, No. 110 of 2023** is struck out and the suit dismissed for being **resjudicata.**
- (b) The Applicant as the successful party is awarded costs of this application.

Order accordingly.

Dated at Hoima this **14th** day of **June, 2024**.

..... **Byaruhanga Jesse Rugyema JUDGE**

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