

UGANDA / JUDGMENT

Kyagaba v The Registered Trustees of Kampala Archdiocese (Miscellaneous Application 2593 of 2023) [2024] UGHCLD 262 (7 November 2024)

[2024] UGHCLD 262

COURT

HC: Land Division (Uganda)

BEFORE

Nabakooza, J

CASE / FILE NUMBER

Miscellaneous Application 2593 of 2023

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THE REPUBLIC OF UGANDA**IN THE HIGH COURT OF UGANDA AT KAMPALA****LAND DIVISION****MISC. APPLICATION NO. 2593 OF 2023.****(ARISING FROM CIVIL SUIT NO. 133 OF 2014 AND CIVIL SUIT NO. 229 OF 2018)****KYAGABA CHARLES ::::::::::::::::::::::::::::::****VERSUS****THE REGISTERED TRUSTEES OF KAMPALA ARCHIODIOCE ::::::::::::::::::::::::::::::****BEFORE: HON LADY JUSTICE NABAKOOZA FLAVIA. K****RULING**

This application was brought by notice of motion under Section 98 of the Civil Procedure Act, Section 33 and 14 of the Judicature Act, Order 52 rules 1 and 3 of the Civil Procedure Rules and Section 8(1) of the Human Rights Enforcement Act 2019 seeking the following reliefs; -

- i. That an order be issued staying proceedings in Civil Suit No. 133 of 2014 and Civil Suit No. 229 of 2018 pending before this Honorable Court until determination of Misc. Cause No. 128 of 2023 pending before the High Court Civil Division.

- ii. Costs of the Application be provided for.

The grounds of the application are contained in the affidavit in support deposed to by Kyagaba Charles (the Applicant herein), and briefly are that;-

- a. The Applicant is charged with criminal trespass and malicious damage to 15 property in criminal cases 536 of 2022, 629 of 2022, 691 of 2022 and 746 of 2022 on land in Ziru Wamala Parish Sisa Sub-county Kajjasi- Wakiso district and a matter is pending before this court in Civil Suits No. 133 of 2014 and 229 of 2018 where the Applicant possess lawful court orders issued by this court. 20

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- b. The court having issued lawful orders, the agents of State House with gross impunity violated the same by preferring criminal charges against the Applicant pending in the Chief Magistrate's Court of Entebbe at Entebbe.
- c. The Applicant on 7/07/2023 filed Misc. Cause No. 128 of 2023 seeking orders for discontinuance of criminal proceedings in Criminal Cases No. 536 of 2022, 629 of 2022, 691 of 2022 and 746 of 2022 being illegal, unlawful and total violation the Applicant's right to own property and that the same is pending hearing and determination by the High Court Civil Division.
- d. The Court found various third parties in contempt of this court's orders in Misc. Application No. 1024 of 2020 and they have since deprived the Applicant of his land working in cohorts with agents of State House who charged him with un-lawful and illegal criminal charges that he is challenging before the High Court Civil and Criminal Divisions.
- e. That the third parties have infringed the Applicant's human rights and have disobeyed all court orders by continued construction and altering the status quo. The Applicant has since instituted Misc. Cause No. 128 of 2023 pending in the Civil Division and that it takes precedence over any other matter before any competent court.
- f. That it is in the interest of justice the application is granted.

The application was opposed by Mr. Denis Luteete, a holder of Powers of Attorney granted by the Respondent. He deposed that the Respondent is not aware of the criminal cases and that she is not a party to Misc. Cause No. 128 of 2023; that the matters before this court are totally different from the criminal cases of malicious damage to crops of Kyomuhana Margaret, Nalwanga Eva. Mujasi Emmanuel; that the alleged third parties who are alleged to have infringed on the Applicant's rights are not party to the main suit; that the hearing of the main suit can proceed concurrently with the criminal cases, and that the criminal cases are totally different from matters in the instant case. Further, that the Applicant shall not suffer any prejudice with the

hearing of the instant suit alongside Misc. Cause No. 128 of 2023 filed in the Civil Division; and that the Applicant is not interested in having the case heard to its logical conclusion, thereby filing numerous applications intended to frustrate the progress of the case.

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⁵⁵ In rejoinder, the Applicant averred that the Respondent being the Registered proprietor of the land is aware of all events that occurred on the suit land including the pending suits. That the subject matter in Misc. Cause No 128 of 2023 and Civil Suits No. 133 of 2014 and 229 of 2018 is the same and that any outcome in Misc. Cause No. 128 of 2023 will directly affect the outcome in the instant suit. That the alleged third parties filed Misc. Application No. 237 of ²⁰²² to be added as parties and the same was dismissed by the trial Judge. That the third parties had already been regarded as trespassers on the suit land, and were ordered to vacate but have been guarded by operatives of State House Anti-Corruption Unit. That this court has powers under Section 8 of the Human Rights Enforcement Act 2019 to grant a stay of proceedings pending the disposal of his Human Rights application which is pending ruling on 12/09/2024. 60 65

Representation: the Applicant was represented by Counsel Namiwulya Racheal and Christine Narnaganda while the Respondent was represented by Counsel Edwin Busulwa. Both Counsel filed written submissions, including submissions in rejoinder which I have considered.

Counsel for the Applicant raised only one issue for resolution, to wit; i. Whether or not a stay of proceedings should be granted?

Submissions.

The Applicant's Counsel relied on Section 8 (1) of the Human Rights Enforcement Act 2019 which provides that, 'where in any proceeding in the High Court, a question arises as to the violation of fundamental rights or freedom, the presiding judge shall immediately start proceedings and determine the question raised.' That the above Section guides on the procedure to be adopted where during proceedings in the High Court, a question arises as to violation of fundamental right or freedom and that the provision is couched in mandatory terms with the word SHALL.

He submitted further that the pending civil and criminal suits before different courts all touch the same suit land where the Applicant has his kibanja interest. That the subject matter in Misc. Cause No. 128 of 2023 is the same as that in Civil Suits No. 133 of 2014 and 229 of 2018 which is the suit land comprised in Zziru W anala Parish Sisa Sub County Ka. i. iasi Town Council Wakiso District.

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That any ruling/judgment from Civil Suit No. 133 of 2014 and 229 of 2018 shall have a direct bearing/effect on the pending Human Rights Application vide Misc. Cause No. 128 of 2023.

He also relied on the case of Kitutu Mary Gorretti Kimono Vs Attorney General Misc. Application No. 76 of 2023 where Justice Okuo Jane Kajuga held that:

it will be futile and costly exercise for the court to proceed with the trial and for the prosecution to call its witnesses and proceed to lead evidence, and even for the accused to defend themselves, only for the court of appeal to decide otherwise, ... I accordingly stay proceedings pending the decision of the court of Appeal in civil Appeal No. 1525 of 2023.

He further relied on the case of **Paul Wanyoto Vs SGT Oumo & AG Misc.** 105 Application No. 2 of 2021 where Justice Gidudu Lawrence in consideration of Human Rights Enforcement Act of 2019 held that

> under the Human Rights Enforcement Act, allegations of torture must first be resolved before the trial proceeds. The Applicant seeks to nullify the trial from

which a warrant of arrest has been issued against him. With all the sympathies 110 for the complainant in the main criminal case, in view of the appeal filed against the decision of this court, I'm constrained to stay the trial of criminal case No. 75 of 2019 and consequently the warrant of arrest issued against the Applicant to allow the court of Appeal pronounce itself on the legality of the case before this court. 115

> That this court should be pleased to apply the same precedents, which is the correct position of the law and stay CS No. 133 of 2014 and 229 of 2018 until determination of Misc. Cause No. 128 of 2023 pending before the Civil Division.

> In reply, Counsel for the Respondent also relied on Section 8 (1) of the Human Rights(Enforcement) Act Cap 12 and the cases of **Kitutu Mary Gorret Vs AG** and **Paulo Wanyoto Vs SGT Oumo & AG** (supra) and submitted that the same were cited out of context. That from the above Section, the proceedings that ought to be stayed are those where a question as to the violation of a fundamental right or freedom arises and are stated criminal cases. Secondly, that the alleged illegal Human Rights violations were allegedly perpetuated by the agents of State House

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Anti-Corruption unit and third parties who are linked to the cited criminal cases but the Respondent herein is not cited or linked to the human rights violations. That the said agents of State House Anti-Corruption Unit and the third parties are not parties to the consolidated Civil Suits No. 133 of 2014 and 229 of 2018. That the subject matter in the main suit is different from Misc. Cause No. 128 of 2023 and that the ruling in the application cannot affect the consolidated Civil Suits.

The Counsel submitted further that the Applicant's claim that he has been deprived of his right to own property is unsustainable since the question of ownership of the said Kibanja is under contest vide the consolidated suits. That until the question of ownership of that Kibanja is resolved, the applicant cannot assert any ownership rights to the same.

Resolution of the Issue.

I shall first determine whether the Human Rights (Enforcement) Act, 2019 is applicable to stay of proceedings.

The record shows that the Applicant seeks to stay proceedings in consolidated Civil Suit No. 133 of 2014 and 229 of 2018. His grounds are that he filed Misc. Cause No. 128 of 2023 pending in the Civil Division seeking discontinuance of criminal cases allegedly illegally lodged against him and that it has a likelihood on the outcome on CS No. 133 of 2014 and 229 of 2018.

The record also shows that the Applicant, together with a one Jjuko Lawrence Salongo on 10/08/2023 filed Misc. Cause No. 128 of 2023 arising from Criminal Cases No. 536, 629, 630, 691, 746 and 710 of 2022 which are before the Chief Magistrates court limited by various orders. They brought the said application against the Attorney General, Kitiribo, Janet Kirunda, Erok Stanley, Fwina Masiko, Lusius Karici, Ivan Margret Kyor-nuhangi, Eva Nalwanga, Asimwe Collins, Mujasi Irinmanu and Michael Likens Katende.

I have already reproduced the provisions of Section 8(1) the Human Rights (Enforcement) Act, 2019 and need not reiterate them. It is a fact that the said law came into force on the 15th day of November, 2019, according to its commencement clause. In *Mayanja & 7 Ors vs. Wantante & 5 Ors* (Civil Suit

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No. 497 of 2018), my learned Sister Nakachwa J pointed out that, 'the importance of a commencement date is that it gives the date when the law becomes *operative...'. Further, it is also trite that laws do not have retrospective application unless expressly provided for (*Mayanja Joshua & Others vs Wantante Samuel & Others*, supra; *Wambewo vs Mazelele HCMA No.128 of 2013*; *Lukwago & 13 Ors Vs Electoral Commission & 2 Ors* (Misc. Cause No. 431 of 2019) *Noah Owora vs James Magode Ikuya & Others HCCS No.30 of 2022*).

In this case, it is a fact that before the said commencement date, Civil Suit No. 133 of 2014 and Civil Suit No. 229 of 2018 had been filed and were on going. Further, there is no indication in the Human Rights (Enforcement) Act, 2019, that any of its provisions was intended to apply retrospectively. Therefore, I find that the said Statute, in particular Section 8(1) of the same, does not apply to matters which were pending before its enactment, in particular Civil Suit No. 133 of 2014 and Civil Suit No. 229 of 2018.

It is evident that the cases cited by Counsel for the Applicant involved matters filed after the enactment of the Human Rights (Enforcement) Act 2019 (Kititu Mary Goretti Kimono vs AG, *supra*; Paul Wanyota vs Sgt Oumo Joshua, *supra*).

I am mindful that the application was also brought under Section 98 of the Civil Procedure Act, Section 14 and 33 of the Judicature Act which provide for inherent power of this court. However, it is not justifiable to invoke the power in the circumstances of this case.

Furthermore, I addressed myself to the provisions of Section 6 of the Civil Procedure Act Cap.282 which also provides for stay of proceedings. It specifically provides that

No court **shall** proceed with the trial of any suit or proceeding in which the matter in issue is also directly and substantially in issue in a previously instituted should or proceedings between the same parties, or between parties under whom they or any of them claim, litigating under the same title, where the suit or proceeding is pending in the same or any other court having *jurisdiction in Uganda to grant the relief claim.*

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As far as those provisions are concerned, the record indicates 3 (three) suits pending disposal by the High Court, that is; Civil Suit No. 133 of 2014 and Civil Suit No. 229 of 2019 pending at the High Court, Land Division; and Misc. Cause No. 128 of 2023, pending in the High Court, Civil Division. Further, the Respondent averred that there are third parties who are not parties to this application and the other suits. Indeed, the violations and criminal acts pleaded under Misc. Cause No. 128 of 2023 were allegedly committed by persons other than the Respondent herein. Accordingly, the above provisions are literally inapplicable to the Applicant's plight as well.

For reasons stated above, I find no justification for this court to stay proceedings in CS No. 133 of 2014 and CS No. 229 of 2018. In conclusion, the issue is resolved in the negative.

Consequently, the application lacks merit and is hereby dismissed with costs.

$\frac{1}{\text{day of}}$ Signed, dated and delivered at Kampala this...

Nabakooza Flavia. K Judge

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