

UGANDA / JUDGMENT

Magandaazi v Millard (Miscellaneous Application 249 of 2025) [2025]

UGHCLD 66 (29 May 2025)

[2025] UGHCLD 66

COURT

HC: Land Division (Uganda)

BEFORE

Kaahwa, J

CASE / FILE NUMBER

Miscellaneous Application 249 of 2025

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THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT KAMPALA (LAND DIVISION) MISCELLANEOUS APPLICATION NO. 249 OF 2025 (ARISING FROM HCCS NO. 1133 OF 2024)

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MAGANDAAZI DENIS ::::::::::::::::::::::::::::::

VERSUS

MONICA MILLARD ::::::::::::::::::::::::::::::

Before: Hon. Lady Justice Christine Kaahwa**RULING.**

This Application is brought under Order 26 rule 1 and 3 of the Civil Procedure Rules as amended, Section 98 of the Civil Procedure Act, Cap 282 and Section 33 of the Judicature Act, Cap 16 for orders that;

- 1. That the respondent furnishes security for costs of UGX 30,000,000/= (thirty) million Ugandan shillings) before hearing and determination of the main suit.
- 2. Costs of the application be provided for.

The other grounds of the application are that the Respondent has filed a Civil Suit 1133 of 2024 against the Applicant, the suit is frivolous and vexatious, the respondent is a foreigner with no known place of abode in Uganda, the respondent has no known properties in Uganda and the court may find it difficult to enforce

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costs against her in the event that she loses the main suit, and that the main suit will be rendered nugatory if the application is not granted.

The application is supported by the affidavit deposed by Magandaazi Denis where he states briefly;

- 1. The defendant lodged a suit against him for recovery of land comprised in Block 423 Plot 642.
- 2. That he is advised by his counsel that the suit is frivolous and vexatious due to the following reasons;
 - a. That the suit land is non-existent since the same had been subdivided into numerous plots (\$1025 - 1036\$) and the Respondent cannot maintain a claim against him.
 - b. That the 1st defendant in Civil Suit No. 1133 of 2024 has since been struck off from the company register and no suit can be brought against a non-existent party.
 - c. That the 1st defendant in Civil Suit No. 1133 of 2024 is a foreign company since the Respondent is the majority shareholder with 50% of the shares and therefore cannot own mailo land and the acquisition of the same was illegal.

The Respondent filed an affidavit in reply deposed on the 13th March 2025 where she states;

- 1. That she is advised by her lawyers that her claim against the applicant in Civil Suit No. 1133 of 2024 is based on proprietary rights which are not subject to order for security of costs.
- 2. That Civil Suit No.1133 of 2024 against the Applicant is for fraudulent expropriation of the Momi's Tropical Flowers Limited (nominal defendant),

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to wit land at Busiro Block 423 formerly Plot 642 now subdivided into Block 423, Plots No. 1025,1026, 1027,1028,1029,1030,1031,1033,1034, and 1035 situate at Mbubuli measuring 4.3020 Hectares and Land at Busiro Block 423 Plot 641 situate Mbubuli measuring approximately 0.9720 Hectares.

- 3. That the subdivision deprived her of her equitable and legal interest as a beneficial owner, recovery of the 1st defendant property and caused unjust enrichment and the 2nd Defendant breached his duty as a director.
- 4. That in the affidavit in support, the applicant admits having fraudulently dealt with the suit land when he subdivided it.
- 5. That the striking off of the 1st defendant company in Civil Suit No 1133 of 2024 from the company register does not give the applicant the right to fraudulently transfer the 1st defendant company property to his name at the expense of other shareholders and that notwithstanding, the 1st defendant has been reinstated.
- 6. That she has been advised by her lawyers that the 1st defendant company's acquisition of land was lawful and the Momi's Tropical Flowers Ltd shares are held in equal proportion whereby Shawn Maganda and the applicant who are Ugandans, hold 50% and she equally holds 50%.
- 7. That she is financially sound and any judgement and orders of court granted against her can be enforced against her in the United States of America.

The Applicant filed an affidavit in rejoinder whose contents I shall not reproduce.

Representation.

The Applicant is represented by Jambo & Co. Advocates while the Respondent is represented by Amber Solicitors & Advocates. Both counsel filed written submissions for their clients.

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Issue for determination.

Whether there are sufficient grounds for granting an order for security for costs.

Resolution of the issue.

Whether there are sufficient grounds for grant of an application for security for costs to the applicant/ defendant.

Order 26 rule 1 of the Civil Procedure Rules, (CPR) provides that court may if it deems fit order a plaintiff in any suit to give security for the payment of all costs incurred by any defendant.

In the Supreme Court case of G. M. Combined (U) Ltd vs A. K Detergents 'U' Ltd [1997] HCB 40, the power to order for security for costs is purely a discretionary one. It must always be exercised in very special circumstances taking into account the nature, purpose and circumstances of the case.

This being a discretionary matter though, court is given guidelines to follow to aid it in the exercise its discretion.

In Anthony Namboro & Fabiano Waburoko Vs Henry Kaala [1975] HCB 324 it was held that the main considerations to be taken into account in an application for security for costs are:

Whether the applicant is being put to undue expense by defending a \$a)\$ frivolous and vexatious suit.

That he has a good defence to the suit and he is likely to succeed. \$b)\$

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In determining whether the two considerations above have been proved, the observations of Justice Oder JSC, as he then was, in G. M. Combined (U) Ltd (supra) are instructive, he observed thus;

" in a nutshell, in my view, the court must consider the prima facie case of the plaintiff and defendant. Since a trial will not yet have taken place at this stage, an assessment of the merit of the respective cases of the parties can only be based on the pleadings, on the affidavits filed in support of or in opposition to the application for security of costs and any other material available at this stage."

I shall therefore proceed to consider the pleadings to determine whether Respondent's case is frivolous and vexatious.

A frivolous case means a case that lacks legal basis or legal merit, not serious and not reasonably purposeful while a vexatious suit is one instituted maliciously and without good cause. (see R V Ajit Singh s/o Vir Singh (1957)EA 822.

The applicant in his affidavits in support, rejoinder and in his submissions, stated that the respondent is a foreigner with no known residence or property in Uganda; that the suit land is non-existent as it has since been subdivided in to several plots; that the 1st defendant company is a foreign company that is legally not allowed to own mailo title in Uganda and also that the 1st defendant company is non-existent as it was struck off from the companies register.

In reply, the respondent stated that the 1st defendant company was reinstated. The respondent claimed that the 1st defendant was a nominal defendant and that it was not a foreign company. That the Respondent owns 50% of the share and the other 25% is Shawn Maganda and another 25% by the Applicant who are Ugandans.

I have looked at page 25 of the Memorandum and Articles of Association (annex B1) to the affidavit of the Respondent, which shows that there are 3 (three)

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subscribers to the company with Monica Millard subscribing 50% of the shares, Mr. Maganda Dennis 30% and Maganda Shawn 20%. Maganda Shawn and Maganda Dennis are said to be Ugandans in paragraph 13 of the applicant's affidavit. While rejoining to the said affidavit, the applicant did not deny the fact that Maganda Shawn and Maganda Denis are Ugandans. I therefore find that the Applicant has proved that the company has 50% shares held by a noncitizen and the other 50% held by citizens of Uganda.

Section 41(4) of the Land Act, Cap 236 (the Act), provides that subject to the other provisions of this section, a non-citizen shall not acquire mailo or freehold land. In this case, the person is body corporate and Section 41 (7) (b) of the Act, provides that a non-citizen means in the case of a corporate body, a corporate body in which the controlling interest lies with non-citizens. Section 41(8)(a) of the Act defines controlling interest to mean in cases of companies with shares, the majority shares are held by persons who are not citizens. In the instant case both the noncitizen and the citizens in the company own equal shares in the company, I find that the 1^{st} defendant is not a foreign company and can therefore hold mailo land.

Additionally, this court observes that the suit claim is for fraudulent deprivation of the Plaintiff and 1^{st} defendant company of its property, unjust enrichment, breach of duty as director of the 1^{st} defendant Company. It is pertinent to observe that the 2^{nd} defendant does not deny being the Managing Director of the 1^{st} defendant and contends that the suit property, land comprised in Busiro Block 423 Plot 642 situate in Mbubuli has since been subdivided into various plots. He does not state into whose names the subdivision was done but only attaches the first page of the title.

Conversely, the search reports, annex "B" to the affidavit of the respondent show that Block 423 Plots 1025, 1026, 1027, 1028, 1029, 1030, 1031, 1032, 1033, 1034

and 1035 are registered in the names of the 2^{nd} defendant. The fact that the suit land has been subdivided and registered in the names of the 1^{st} Defendant prima facie, lays credence to the claim that the 2^{nd} defendant has fraudulently dealt with the company land.

Unjust enrichment occurs when one party (the enriched party) unfairly benefits at the expense of another party, without a legal basis for doing so. In this case the Respondent claims that the property of the company has been subdivided to benefit the 2^{nd} defendant as the various properties have been registered in his names.

If this fraudulent subdivision and unjust enrichment are proved in the main suit then it is likely that the court would find the 2^{nd} defendant in breach of fiduciary duty.

Regarding the non-existence of the 1^{st} defendant, it can be discerned from the pleadings that the Respondent alleges that the 1^{st} defendant company did not submit her annual returns because of the negligence or omission of 2^{nd} defendant. The respondent argues that the 1^{st} defendant is a nominal defendant and avers that the company has not been struck off. The applicant's case is that a non-existent company cannot be sued.

A derivative action is relevant where the company's property has been expropriated by a director or shareholder who has influence on the company frustrates any procedure challenging the expropriation in such an action the company must be a defendant in the action. See *Salim Jamal & 2 Others v Uganda Oxygen Limited and Anor* SCCA No.64 of 1995.

It is my opinion that in order to establish her claim the Respondent was duty bound to add the 1st defendant as a necessary a party to the suit. It is also the respondent's case that the 2nd defendant is responsible for the current state that the

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1st defendant is in. Annexures E to the Respondent's affidavit shows that a caveat was lodged by the Respondent to protect the 1st defendant's company assets from being disposed of by the Director, in order to protect her interest and that of Shawn Maganda who are shareholders. This was done on 2018 or thereabout.

I am of the considered opinion all the claims by the Respondent establish a prima facie case and thus the Respondent's case is neither frivolous or vexatious. The 2nd defendant will not therefore be put to undue expense in defending a frivolous or vexatious suit.

The applicant has a duty to persuade the court that there is reason to believe that the plaintiff will be unable to pay the costs of the defendant if ordered to do so. There must be lack good faith with regard to the proceedings. The applicant must equally prove the facts which establish the plaintiff's intention to evade the payment of costs due to lack of address or intention to change address. See *Peter Katutsi v Sulaiman Mukasa & Sons Limited and Anor* Misc. App. No. 268 of 2021.

According to the Applicant's counsel, the Respondent will not be able to pay costs of the main suit because she has no known property in Uganda and does not reside in Uganda.

It is worth noting that an Order for security for costs protects the defendant in some cases, where in the event of success, the defendant may have difficulty in realizing the costs from the Plaintiff. The mode of security should be of a type, and its amount should be sufficient, to protect the defendant's position as to costs and yet not stifle the Plaintiff's claim. See *Speke Hotel 1996 Limited (T/A Speke Hotel Apartments v Shiela Nadege A. KA. Don Zella HCMA 4 of 2022*.

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Courts have emphasized that the impecuniosity of the Plaintiff is not a basis for which the court would order security for costs. The reasoning here is that an order for costs on this ground alone would prevent access to justice because of a party's pecuniary position despite the establishment principle that poverty must not be a bar to litigation. *Gateway Land Pte LTD V Turner (East Asia) Pte Ltd* [1987]SLR (R)746.

The Respondent in paragraph 16 of her affidavit, deposes that she is financially sound and that all decrees and judgements can be enforced against her in the United States of America.

In the instant application, the Applicant's fear seems to be solely based on the fact that the respondent does not have property in this jurisdiction and the likely difficulty of enforcement of the judgement in suit if he wins.

It would certainly be expensive for the Defendant to execute a judgement against the Plaintiff in the USA. This difficulty per se should not result into an automatic right to payment of security of costs.

The court ought to consider whether the \$2^{nd}\$ defendant is responsible for the alleged impecunious status or has contributed to the Plaintiff's lack of means. It is my finding that the Applicant has not established that the Respondent is impecunious. Additionally, the respondent brings this suit against the \$2^{nd}\$ defendant for unjust enrichment and fraudulent dealing in the company property. She avers that this was done at the expense of the shareholders. It would therefore be absurd for this court to deny the respondent access to the temple of justice by imposing security of costs.

In the premises, I dismiss this application with costs to the Respondent.

Dated at Kampala this 29th day of May 2025.

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Christine Kaahwa

JUDGE
29/05/2025.

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