

UGANDA / JUDGMENT

Mbakira Asaph v Nkuba George William (Civil Suit 75 of 2023)

[2025] UGHC 435 (18 June 2025)

[2025] UGHC 435

COURT

High Court of Uganda

BEFORE

Allan Nshimye, J

CASE / FILE NUMBER

Civil Suit 75 of 2023

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THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT MBARARA HCT-05-LD-CS-0075-2023

| 5 | MBAKIRA ASAPH -----
PLAINTIFF |

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| | VERSUS |

| 10 | NKUBA GEORGE WILLIAM -----
DEFENDANT |

| | BEFORE:
Hon. Justice Nshimye Allan Paul M. |

| | RULING ON A PRELIMINARY OBJECTION |

| 15 | REPRESENTATION
The Plaintiff is represented by M/s Ruyondo & Co. Advocates, while
the
Defendant is represented by M/s Tumwebaze Emmanuel Advocates &
Solicitors. || 20
25 | BACKGROUND
Counsel for the
Defendant raised a preliminary objection
when
the main
case came up for scheduling. The Court granted schedules for the
parties
to file submissions.
The Defendant
filed
submissions, the Plaintiff
replied,
and the Defendant rejoined. || 30 | DEFENDANT'S PRELIMINARY OBJECTION
The defendant contends that the instant
suit
(Civil Suit No.75 of 2023)
offends the lis pendens rule. |

| 35 | That the defendant filed Civil Suit No.78 of 2021 against the Plaintiff and 3 others for inter alia a declaration that the defendants in that case are trespassers, and a declaration that the suit land is his, and the suit is still pending before this Court. That a temporary injunction to maintain the status quo was granted in Civil Suit No.78 of 2021. That Civil Suit No.78 |

of 2021 and Civil Suit No.75 of 2023 pertain to the same suit land, premised at Bihunya Cell, Katete Ward, Nyamitanga Division, Mbarara

City.

Counsel cited **SSENTEZA & ANOTHER VS DONNIE COMPANY LTD & ANOTHER HC CI 5 of 2016** for the holding that to succeed on the lis pendens rule, one is required to show that there is a pending suit before a Court of competent jurisdiction between the same parties and on the same matter as in the subsequent suit. Counsel also cited **SPRINGS INTERNATIONAL LTD VS DIPLOMATE 25 LTD & ANOTHER HCCS No.227 of 2011** for the position that two courts hearing the same matter would set the concerned judicial officers on a collision course with the likelihood of arriving at conflicting judgments on the same facts. Counsel relied on **ATTORNEY GENERAL VS JAMES MARK KAMOGA & ANOTHER SCCA No.8 of 2004** to argue that this suit was filed in abuse of Court process and causes a multiplicity of suits. Counsel prayed for a finding that this suit offends the lis pendens rule.

PLAINTIFF'S SUBMISSIONS IN REPLY

Counsel contended that Civil Suit No.78 of 2021 is in regard to ownership of the suit land while the instant suit (Civil Suit No.75 of 2023) concerns cancellation of the certificate of title based on fraud. Secondly, that the nature of reliefs sought differs in the two suits. It was argued that conditions for lis pendens rule have not been proved and court was invited to overrule the preliminary objection.

DEFENDANT'S REJOINDER

In rejoinder, it was submitted for the defendant that the basis for seeking cancellation of title by the Plaintiff in Civil Suit No.75 of 2023 was the temporary injunction issued in Civil Suit No.78 of 2021. That both parties agreed at scheduling that the subject matter in both suits is the same.

30 DETERMINATION

The *lis pendens* rule is provided for under Section 6 of the Civil Procedure Act CAP 282, which 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* 35 *in a previously instituted suit or proceeding between the same parties, or between parties under whom they or any of them claim, litigating under the same title, where that suit or proceeding is pending in the same or any other court having jurisdiction in Uganda to grant the relief claimed.*

Explanation.—The pendency of a suit in a foreign court shall not preclude a court from trying a suit in which the same matters or any of them are in issue in that suit in the foreign court."

5 The *lis pendens rule* was addressed by His Lordship Hon Justice Ssekaana Musa in **CENTENARY RURAL DEVELOPMENT BANK LTD VS RICHARD IVAN MUNGATI T/A SURVESIS (HIGH COURT CIVIL SUIT NO. 116 OF 2018) [2021] UGHC 46** where he stated;

"According to Black's Law dictionary 11th Edition by Bryan* 10 *A. Garner page 1117 lis pendens means; A pending suit....*"

"The doctrine of lis pendens is only an aspect of the rule of res judicata. Where a conflict arises between the doctrine of res judicata and lis pendens, the former will prevail over the latter. In* 15 *other words, once a judgment is duly pronounced by a competent court in regard to the subject matter of the suit in which the doctrine of lis pendens applies, the said decision would operate as res judicata".*

20 The excerpt above by Hon Justice Ssekaana Musa (then a Judge of the High Court before appointment to the Court of Appeal of Uganda) summarizes the meaning, law and significance of the lis pendens rule.

lis pendens means a pending suit, so a suit that is found to offend the *lis* 25 *pendens rule* is barred in section 6 of the Civil Procedure Act CAP 282 because there is risk of leading to rendering the matter *res judicata* during the hearing of one case, when judgement is entered in another.

The three-way test to apply in a case when considering whether a case 30 offends the *lis pendens* rule is to determine if;

- *1) There are two more suits before a court having jurisdiction to give a remedy.*
- *2) The matter in issue is also directly and substantially similar in both cases*
- 35 *3) The same parties, or between parties under whom they or any of them claim, litigating under the same title.*

The main issue in this preliminary objection is: whether the current suit offends the lis pendens rule.

I will now consider the evidence on court record guided by the three-way 5 test, that is, 1) There are two more suits before a court having jurisdiction to give a remedy. 2) The same parties, or between parties under whom they or any of them claim, litigating under the same title. 3) The matter in issue is also directly and substantially similar in both cases.

10 1. There are two more suits before a court having jurisdiction to give a remedy.

The defendant in his preliminary objection has stated that there is High Court civil suit 75 of 2023 and High Court Civil Suit 78 of 2021 all are before the High court of Uganda at Mbarara. This also admitted by the 15 plaintiff in paragraph 3 of the plaint in High Court civil suit 75 of 2023 and repeated in the plaintiffs' facts in the joint scheduling memorandum admitted on court record on 2nd July 2024.

The parties therefore admit in their pleadings that there are two High 20 Court civil suit 75 of 2023 and High Court Civil Suit 78 of 2021 all before the High court of Uganda at Mbarara. I find that the first test has been proved that there are two suits all before the High Court for consideration in this preliminary objection.

25 2. The same parties, or between parties under whom they or any of them claim, litigating under the same title.

The parties in High Civil Suit No.78 of 2021 are Nkuba George William vs Mugaga Hamidu, Mbakira Asaph, Ndyamuhaki Jordan and Mbakiira 30 Grace. While the parties in the current suit, High Court civil suit 75 of 2023 are Mbakira Asaph vs Nkuba George Willaim. (see the plaints attached to the defendant's submissions in rejoinder).

The parties in High Court civil suit 75 of 2023 namely, Mbakira Asaph as 35 plaintiff and Nkuba George Willaim as defendant are also parties on opposite sides in High Civil Suit No.78 of 2021, wherein Nkuba George Willaim is the plaintiff and Mbakira Asaph is the 2nd defendant.

I find that the second test has been proved that the parties in this current suit, High Civil Suit No.75 of 2023 are also parties on opposing sides in High Civil Suit No.78 of 2021.

5 3. The matter in issue is also directly and substantially similar in both cases.

The evidence on court record contained in the agreed facts in the joint scheduling memorandum signed by both parties in High Court Civil Suit 75 of 2023. The parties agree that parties and suit property in High 10 Court Civil Suit 75 of 2023 is the same as in High Court Civil Suit 78 of 2021. The suit land is premised at Bihunya Cell, Katete Ward, Nyamitanga Division, Mbarara City and it is alleged that on 21st September 2022 the defendant fraudulently obtained a certificate of title over the suit land vide Freehold Register Volume Mbr 1285, Folio 8 Plot 3 Nkuba Close At 15 Bihunya.

In the **plaint in High Court Civil Suit No.78 of 2021** the reliefs sought are a declaration that the defendants are trespassers, a permanent injunction against the defendants and general damages among other 20 orders. The suit land is premised at Bihunya Cell, Katete Ward, Nyamitanga Division, Mbarara City. In essence the High Court would have to determine the ownership of the land between the parties.

In the **plaint in High Court Civil Suit No.75 of 2023** the reliefs sought are 25 a declaration that the defendant acted fraudulently to obtain a certificate of title to the suit land to the exclusion of the plaintiff, an order for cancelation of the title, general damages among other orders. The certificate of title is over the suit land vide Freehold Register Volume Mbr 1285, Folio 8 Plot 3 Nkuba Close at Bihunya. In the **plaint in High Court Civil Suit No.75 of 2023**, the plaintiff states in paragraph 4, 5 & 6 that while High Court Civil Suit No.78 of 2021 was on going to determine the ownership of the suit land, they obtained an injunction to maintain the status quo until the main suit is concluded, despite this the defendant ignored the injunction and processed a certificate of title 35 which promoted the filing of High Court Civil Suit No.75 of 2023.

I find that in High Court Civil Suit No.78 of 2021 this court is determining the ownership of the suit land, where the defendant despite being a party in High Court Civil Suit No.78 of 2021 has now processed a 40 certificate of title, which promoted the filing of High Court Civil Suit

No.75 of 2023. In my view the main issue in High Court Civil Suit No.78 of 2021 and High Court Civil Suit No.75 of 2023 is determining ownership of the suit land. I am fortified in this view by plaintiffs' submissions in reply, where at page 2, the plaintiff admits that the issues in the two suits are interrelated.

In my opinion, if it is true that the defendant in this case processed a certificate of title to the suit land while it was still a contested matter for courts determination in High Court Civil Suit No.78 of 2021. with an existing injunction in place, then the plaintiff would have sought to amend the **plaint in High Court Civil Suit No.78 of 2021** wherein the injunction was granted stating that the defendant has gone ahead to process a title to the suit land in breach of the injunction. The Judicial officer handling High Court Civil Suit No.78 of 2021 would be best placed to give an appropriate remedy to address the changes and allegations.

I am not the judicial officer handling High Court Civil Suit No.78 of 2021, which means that there is a risk that an order made in High Court Civil Suit No.78 of 2021 in regard to the ownership of the land can conflict with an order I make in this suit, High Court Civil Suit No.75 of 2023 in regard to the ownership of the land, which is a main issue that any court must first address. This is exactly what the *lis Pendens* rule is supposed to deter.

- I find that the third test has been proved that matter in issue for 25 determination in High Court Civil Suit No.78 of 2021 is directly and substantially similar to the main issue for determination in High Court Civil Suit No.75 of 2023 now before this Court.
- In conclusion, the three-way test has been fulfilled, I therefore find that 30 High Court Civil Suit No.75 of 2023 offends the *lis pendens* rule. I order that:

- 1. High Court Civil Suit No.75 of 2023 is dismissed.
- 2. The plaintiff shall pay $\frac{1}{2}$ costs to the defendant.

moral of

NSHIMYE ALLAN PAUL M. JUDGE 18.06.2025

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