

**Mukasa v Jamada (Miscellaneous
Application 1784 of 2019) [2024]
UGHCLD 230 (26 September 2024)**
[2024] UGHCLD 230

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Background;

2. The applicant was sued by the respondent vide Civil Suit No.758 of 2019 for trespass onto land comprised in Block 7 Plot 1289 among other remedies, the applicant/defendant in his written statement of defence raised two preliminary objections to wit that the suit was barred by the law on limitation and another that the suit was offending the lis pendens rule since there was a pending suit between the respondent and the applicant predecessor in title vide Civil Suit No.016 of 2008 in the Chief Magistrate's court of Makindye. In resolving the above preliminary objections, the trial judge overruled the said objections and ordered for the suit to proceed on its own merits.

Applicant's evidence;

- 3. The application is supported by an affidavit deposed by the applicant which briefly states as follows;
- i) That in my written statement of defence vide Civil Suit No.758 of 2019 I raised preliminary objections, first that the
suit was barred by the law on limitation and that the suit offends the lis pendens rule.
- ii) That the honorable court resolved only the first objection and in resolving the second one the trial court resolved a different objection.
- iii) That I seek for leave to appeal against the said decision of this court on grounds that the trial judge erred in law and fact when she did not resolve the 2nd preliminary objection occasioning a miscarriage of justice.

Respondent's evidence;

- 4. The application is responded to by an affidavit in reply deposed by the respondent which briefly states as follows;
- i) That the preliminary objection raised by the applicant in respect of my suit being time barred by the law on limitation, the same preliminary objection was determined by this court.
- ii) The second preliminary objection raised by the applicant was well determined by this court and court observed that the cause of action and prayers sought by the parties in the two suits were different.
- iii) That the ruling of this court on the said preliminary objections resolved and determined the two resolutions contrary to what the applicant avers that the court never determined the 2nd preliminary objection.

- iv) That there could have been a mistake in typing the ruling which erroneously captured the title of the second issue as "whether Civil Suit No.758 of 2019 is barred by the law on res-judicata" but on further reading of the ruling, the body of the second issue resolved it as per the submissions of both counsel.
- v) That the judge did not error in law and fact because she resolved the second preliminary objection on the basis of the submissions filed by both parties.
- vi) That the applicant does not have arguable grounds of appeal and that this application is vexatious and frivolous only intended to delay the pursuit of justice in the main suit.

Representation;

5. The applicant was represented by Counsel Jimmy Lubale of M/s 9Luhoma Advocates whereas the respondent was represented by

Counsel Sebbi Muhammad of M/S Messrs Bbale & Partners Advocates and legal consultants. Both parties filed their respective affidavits and only the applicant filed written submissions which I have considered in the determination of this ruling.

Issues for determination by court;

- i) Whether the applicant should be granted leave to appeal against the ruling on preliminary objections vide Civil Suit No.758 of 2019?

Resolution and determination of the issue;

- 6. The right of appeal is a creature of statute and must be given expressly by statute, by virtue of section 76 (1) (h) of *The Civil Procedure Act,* a right of appeal exists from orders made under rules from which an appeal is expressly allowed by the rules. Order 44 of *The Civil Procedure Rules* specifies orders from which appeals arise as a matter of right.
- 7. Rule 2 of order 44 of the civil procedure rules thereof states that an appeal under the Rules shall not lie from any other order except with leave of the court making the order or of the court to which an appeal would lie if leave were given.
- 8. The court to which an application for leave is made should identify and assess the "seriousness and significance" of the points sought to be raised on appeal. *(See; Southern Union Insurance brokers ltd and ors vs Niko Insurance ltd MA. 568 of 2022 before Justice Stephen Mubiru).*
- 9. An application for leave will be granted where prima facie it appears that there are grounds of appeal which meet serious judicial consideration and that the appeal has reasonable chances of success.

- 10. The court to which an application for leave to appeal is made may deny the said application if its satisfied that the applicant has no realistic chances of succeeding on appeal and granting the said application is discretionary*. (See; Swain vs Hillman of 2001 ALL*

ER ta page 91)

- 11. In the instant application, the applicant relies on the following grounds of appeal to bring this application;
- i) Whether the trial judge erred in law and fact when she did not resolve the 2nd preliminary objection raised by the applicant as to whether the main suit was an abuse of court process since the only disputed land between the respondent

and applicant is still pending in the Makindye Chief Magistrate Court vide Civil Suit No.16 of 2008.

- ii) Whether the trial judge erred in law and fact when she formed and resolved a different issue as to whether Civil Suit No.758 of 2019 is barred by the law on res judicata thus occasioning a miscarriage of justice.
- iii) Whether the trial judge misdirected herself on the law regarding limitation when she held that the limitation time for the respondent/plaintiff's cause of action started to run in 2019.
- 12. The first two grounds are hinged on the fact that the trial judge misdirected herself on the law of lis pendens rule when she resolved the 2nd preliminary objection under the law on res judicata.
- 13. Drawing reference to the ruling by the trial judge on the said preliminary objections delivered on the 11th of April of 2024 at page 6 under paragraph 19 and 20, in resolving the 2nd preliminary objection the trial judge stated the following*; In reply counsel for the plaintiff relied on the provisions of section 6 of the Civil Procedure Act and the decision in springs international ltd*

vs hotel diplomat (supra) where a number of considerations have to be looked at to consider whether the instant suit is barred by the "lis pendens" rule and these are; *i) Whether the matter(s) in issue in the instant suit are directly and substantially in issue in a previously instituted suit. ii) Whether the previously instituted suit is between the same parties. iii) Whether the suit is pending before in the same or any other court having jurisdiction to grant the reliefs claimed.*

- 14. Further under paragraph 26 of the said ruling, the trial judge stated this in her findings
"In the premises, this honorable court is of a finding that the les pendens rule does not apply to the case at hand and the instant suit is not barred by the law on limitation hence the two preliminary objections raised by counsel for the defendant are hereby overruled with..."

- 15. The reading of the trial judge's ruling takes me to the fact that the trial judge resolved counsel for the applicant's 2nd preliminary objection in line with the law on les pendens rule. The mere fact that the trial judge indicated in her second issue that "*whether Civil Suit No.758 of 2019 is barred by the law of res-judicata*"

it cannot be said that the same judge never considered the applicant's 2nd preliminary objection.

- 16. The leading provision of the civil procedure Act and case law which is **Springs international ltd vs Hotel Diplomat Ltd & Anor CS No.227 of 2011** that the trial judge relied upon in resolving the applicant's 2nd preliminary objection relates to the les pendens rule as rightly stated by court.
- 17. As to whether the trial judge misdirected herself on the law regarding limitation when she ruled that the cause of action arose in 2019 and the instant suit was filed in the same year there was no way the main suit would be barred by the law on limitation.
- 18. The cause of action in the instant main suit is one of trespass against the applicant/defendant and the respondent/plaintiff rightly stated how the trespass occurred when the defendant established a wall on his land in 2019, this is a fact that is also stated in the respondent's/plaintiff's pleadings. Therefore, that means that the limitation time started to run in 2019 when the plaintiff established that the defendant had a wall on his land and the instant main suit was filed in 2019. Parties should take note

that while resolving preliminary points of law, courts only consider the pleadings and attachments by the parties.

In the result, I am of the view that the applicant does not raise grounds of appeal which merit serious judicial consideration by the court of appeal and allowing such a litigant to go to the court of appeal would be promoting abuse of court process.

Therefore, the instant application stands dismissed by this court with no orders as to costs.

I SO ORDER.

NALUZZE AISHA BATALA

Ag. JUDGE

26th -09-2024

Delivered on the 26th day of September 2024 electronically via ECCMIS.

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Prepared on 13 October 2026 · Esheria