

UGANDA / JUDGMENT

Muyonjo v Nsamba & 2 Others
(Miscellaneous Application 1636 of 2024)
[2024] UGHCLD 270 (15 November 2024)
[2024] UGHCLD 270

COURT

HC: Land Division (Uganda)

BEFORE

Naluzze Aisha Batala, J

CASE / FILE NUMBER

Miscellaneous Application 1636 of 2024

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THE REPUBLIC OF UGANDA**IN THE HIGH COURT OF UGANDA AT KAMPALA****(LAND DIVISION)****MISCELLANEOUS APPLICATION NO. 1636 OF 2024****(ARISING FROM CIVIL SUIT NO. 1554 OF 2023 and CIVIL SUIT No. 471 OF 2019)****MUYONJO FRANCIS ::::::::::::::::::::::::::::::::::: APPLICANT****VERSUS****1. MICHEAL NSAMBA**

- **2. CIVIL AVIATION AUTHORITY**
- **3. MPANGA JOHN (A beneficiary of the estate of the late Mbirontono Yozefu) ::::::::::::::::::::::::::::::::::: RESPONDENTS**

BEFORE; HON. LADY JUSTICE NALUZZE AISHA BATALA RULING***Introduction;***

1. This application was brought under order 11 rules 1(a) & (b) and
2 of the civil procedure rules for orders that;

- i) Civil Suit No. 1554 of 2023 and counter claim in the suit be consolidated with Civil Suit No. 471 of 2019 so that the matter is disposed off and determined together.
 - ii) That the proceedings in Civil Suit No. 471 of 2019 be stayed until further orders of court.
- iii) Costs of the application be in the cause.

Applicant's evidence;

- 2. The application is supported by an affidavit deponed by the applicant which briefly states as follows;
- i) That I am the defendant and counter-claimant in Civil Suit No. 1554 of 2023 wherein the 3rd respondent(plaintiff) seeks orders to declare my interest in the land comprised in Busiro Block 449 Plot 9(formerly Plot 2) at Bugendere null and void.
- ii) That I have filed a defence and counter claim ready to protect my interests.
- iii) That in the said suit the 1st respondent was also sued but he chose not to file a defence there in a glaring act of connivance.
- iv) That I know the 1st respondent did file Civil Suit No. 417 of 2019 against Civil Aviation Authority and the Uganda Land commission seeking for a compensation over Busiro Block 449 Plot 9 at Bendegere.
- v) That both files have been allocated to Hon. Lady Justice Naluzze Aisha Batala.
- vi) That it is in the interest of justice that both suits and counter claim in Civil Suit No. 1554 of 2023 be consolidated to avoid

diverging decisions on ownership in respect of Busiro Block 449 Plot 9(formerly Plot 2) at Bendegere.

1st Respondent evidence;

- 3. The application is responded to by an affidavit in reply deponed by the 1st respondent which briefly states as follows;
- i) That it's true the applicant is a defendant in HCCA No. 1554 of 2023 but there are other defendants in the said suit.
- ii) That it's true I filed HCCS No. HCCS No. 472 of 2019 against Civil Aviation Authority seeking for compensation or the return of the suit land comprised in Block 449 Plot 9 at Bendegere.
- iii) That the two suits cannot be consolidated since the subject matters in both suits are not the same, parties are different, causes of action are also not related.

3rd respondent's evidence;

- 4. The application is responded to by an affidavit in reply deposed by the 3rd respondent which briefly states as follows;
- i) That it's true I am the plaintiff in HCCS No. 1554 of 2023 and it's true that the applicant has a counter claim in the said suit though the same is barred in law.
- ii) That since the parties in HCCS No. 1554 of 2023 have an interest in the said matter which the applicant seeks to consolidate with HCCS No. 471 of 2019, the applicant had to make all the parties party to this application.
- iii) That I wish to state that the parties to the two suits are different and an overlap of one or two parties appearing in either suit doesn't make the parties to both suits similar to warrant the consolidation of the two suits.

Representation;

5. The applicant was represented by Counsel John Paul Baingana of M/S JP Baingana & Associated Advocates, the 1st respondent was represented by Counsel Mpagi Sunday and Magida Atulinda of Mpagi Sunday & Co. Advocates and Kabega, Bogezi and Bukenya Advocates and the 3rd respondent was represented by Counsel Gilbert Nuwagaba of KGN Advocates. No party filed written submissions in the instant application.

Issues for determination;

Whether Civil Suit No. 1554 of 2023 can be consolidated with Civil Suit No.471 of 2019?

What remedies are available to the parties?

Resolution and determination of the issues;

- 6. The law under **Order 11 rule 1** of The Civil Procedure Rules, is that where two or more suits are pending in the same court, based on the same facts, founded on more or less similar grounds and seeking similar relief from the court, although filed separately, in which the same or similar questions of law or fact are involved or common to all may arise, such suits may be consolidated, either upon the application of one of the parties or at the court's own motion and at its discretion.
- 7. Referring to the decision in **Stumberg & Anor. Versus Potgieter (1970) EA 323 cited in Prince Balera Page 4 of 8 & 7 Others Versus Attorney General & 153 Ors, HC Misc. Application No. 176 of 2017 a decision by Hon. Lady Justice Eva Luswata** wherein the factors were enumerated as follows;- **"Consolidation of suits...should be ordered where there are common questions of law or fact in actions having sufficient importance in proportion to the rest of each action to render it desirable that the whole of the matters should be disposed of at the same time, consolidation should not be ordered"**

***where there are deep differences between the claims and defences in each action*".**

- 8. The purpose of consolidation is to avoid a multiplicity of proceedings, to promote the most expeditious and least expensive resolution of disputes, and to avoid inconsistent judicial findings.
- 9. While resolving the issue of whether Civil Suit No.1554 of 2023 and C S No.471 of 2019 should be consolidated, it should be observed that the principles that should be considered are that there are common questions of law or facts arising, the right to relief claimed arising out of the same transactions.
- 10. In the instant application, the subject matter in HCCS 1554 of 2023 and the counter claim is land comprised in Busiro Block 449 formerly Plot 2 currently part of Plot 9 at Bendegere as per paragraph 3(a) of the plaint whereas the subject matter in HCCS No. 471 of 2019 is land comprised in Block 449 plot 9 land at Bendegere.
- 11. Further the parties in HCCS No. 1554 of 2023 and the counter claim are Mpanga John vs Muyonjo Francis, Ahamya Associated Advocates, Nsamba Micheal, Jesse Lule Mukwaya and the Commissioner land registration whereas the parties in Civil Suit

No.471 of 2019 are Micheal Nsamba vs Civil Aviation Authority and Uganda land commission. It appears that the parties to the said suits are not similar instead the two suits share common parties.

- 12. I am of the view that similar questions of law and facts are to arise in the two suits since the pleadings relate to the same subject matter and the two suits share common parties. Having the two suits determined separately might not put to rest all the questions arising from the suit land but rather lead to multiplicity of suits which consolidation tends to cure.
- 13. In the result, for the interests of justice and to ensure that all the interests of the parties in the two suits are fully determined by court. This court is of the finding that the two suits HCCS No. 1554 of 2023 and HCCS No.471 of 2019 be consolidated before this court.
- 14. Therefore, the instant application succeeds with no orders as to costs.

I SO ORDER.

NALUZZE AISHA BATALA

Ag. JUDGE

15th/11/2024

Delivered Electronically via ECCMIS on the 15 th day of
November, 2024

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