

UGANDA / JUDGMENT

Opoloti Oguluka v Ssenyonjo
(miscellenous Application no.622.2025)
[2025] UGHCLD 115 (27 June 2025)
[2025] UGHCLD 115

COURT

HC: Land Division (Uganda)

BEFORE

Kaahwa, J

CASE / FILE NUMBER

miscellenous Application no.622.2025

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**THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT KAMPALA (LAND
DIVISION) MISCELLANOEUS APPLICATION NO. 622 OF 2025 ARISING FROM MISC.
APPLICATION NO.1462 OF 2024 (ARISING FROM CONSOLIDATED CIVIL SUIT NO.846
&CIVIL SUIT 897 OF 2021) <table> RAYMOND OPOLOT
OGULUKA:.....**

VERSUS

**SSENYONJO ROBERT:..... BEFORE HON. LADY JUSTICE
CHRISTINE KAAHWA**

RULING.

The Application.

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The Applicant brought this application under Order 26 Rules 1, 2 &3 of the Civil Procedure Rules S.1 71-1 (CPR) seeking orders that the Respondent furnishes security for costs of Ugx.100,000,000(One Hundred Million) shillings for consolidated Civil Suits No.846 and 897 of 2021 and costs of this application.

The Applicant contends that the Respondent is the Plaintiff in consolidated Civil Suits No.846 and 897 of 2021 wherein he had sued several parties and therefore an application for security for costs against the Respondent is justifiable. He contends under paragraph 2 of his affidavit in support that he is being put into the expense of defending a frivolous, misconceived and vexatious suit and it discloses no cause of action. It is again the Applicant's contention that he has a

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good defense and a counterclaim against the Respondent with a likelihood of success, that the Respondent is not ordinarily domiciled in Uganda which will make execution difficult; the Applicant is not aware of any known source of income of the Respondent or any place of abode or property in Uganda and that this has made it difficult for the Applicant being the successful party in Miscellaneous Application No. 1462 of 2024 to gain from the fruits of that ruling through execution. In conclusion, the Applicant contented that the justice of this case demands that an order for payment of security for costs be made against the Respondent.

The Reply.

The respondent filed an affidavit in reply deposed by the Respondent and he states that; he lawfully purchased the land from the Administrator General and has been in possession for longtime before the Applicant encroached on the land; he is a citizen of Uganda and resides in Uganda and there is no justification for grant of security for costs.

Representation and hearing.

The Applicant was represented by M/S. Alaka & Co. Advocates while the Respondent was represented by M/S Litmus Advocates. The parties were directed to file written submissions which this Court has duly considered in this ruling.

Both parties filed written submission, however the Respondent raised two preliminary objections being that,

- 1. The Application is illegally brought as it offends the provisions of Order 26 Rule 3 of the Civil Procedure Rules.
- 2. The Application is over taken by events and an abuse of Court process.

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Aside from the preliminary objections, the following other issues were raised for the determination of Court.

- 1. Whether there are sufficient grounds for a grant of an order for security of costs against the Respondent?
- 2. Whether there are any remedies available to the parties?

Resolution of the issues.

I will resolve the preliminary objections first.

Objection 1: The Application is illegally brought as it offends the provisions of Order 26 Rule 3 of the Civil Procedure Rules.

The Applicant in his written submission, prayed that this Court be pleased to consider the title "Notice of Motion" on the application instead as Chamber Summons by invoking the provisions of Section 98 of the Civil Procedure Act. He further invited Court to align itself with the provisions of Article 126(2)(e) which requires that justice should be administered without undue regard to technicalities. He also relied on the case of **Banco Arab Espanola Vs Bank of Uganda (1999)2 EA 22** where the Supreme Court held that,

"that the administration of justice should normally require that the substance of all disputes should be investigated and decided on their merits and that errors and lapses should not necessarily debar a litigant from the pursuit of his rights unless the lack of adherence to the rules renders the application process difficult and inoperative".

He quoted the case of **National Enterprises Corporation Vs Mukisa Foods Ltd C. A No.42 of 1997** where the Court of Appeal held that, denying a subject a hearing should be the last resort of Court. He prayed that Court ignores the topographical errors and hears the application on its merits.

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The Respondent's Counsel vehemently opposed this prayer and submitted that, Order 26 Rule 3 of the Civil Procedure Rules expressly provides that, applications for security for costs must be by way of summons in chambers. That the current application is brought by Notice of Motion yet it seeks remedies under Order 26 Rule 1.

Further, he contended that where any law is specific on procedure, the said procedure should be strictly adhered to and any action brought in disregard of the said procedure is illegally before Court as it violates written law. It was again his argument that the Court can not be seen to entertain an application which was not brought in accordance with the law and to do so would be to condone an illegality and to act in disregard of trite law that once an illegality is brought to the attention of the Court overrides all questions. To qualify his contention, he quoted the case of **Makula International Ltd Vs Cardinal Nsubuga and Anor 1981 HCB 11**.

Resolution of the objection.

Order 26 Rule 3 of the Civil Procedure Rules provides that an application under this Order shall be commenced by Chamber Summons. Courts have often times stated that the citation of the wrong law or procedure does not in itself invalidate the proceedings. I am buttressed by *Saggu versus Road Master Cycles (U) Ltd* [2002] 1 EA 258 where the Court of Appeal held that wrong citation of the law or wrong procedure does not invalidate proceedings.

Article 126(2)(e) of the Constitution of the Republic of Uganda, 1995 as amended enjoins this court to render substantive justice and pay no regard to technicalities. I find that the error or wrong procedure does not go to the jurisdiction or root of the matter and does not prejudice the Respondent. The objection is therefore overruled.

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Objection 2: The application is overtaken by events is frivolous, vexatious and an abuse of court process.

The Respondent contends that an application of this nature can only be brought by a defendant against the Plaintiff. That in this case, the suits were consolidated and the Applicant is the Plaintiff in Civil Suit No.846 of 2021 while the Respondent is the Defendant. In Civil Suit No.897 of 2021 the Respondent is the Plaintiff and the Applicant is the Defendant and that as such the Applicant has no right to invoke Order 26 Rule 1. He submitted that the application was not well thought out as was overtaken by the events of consolidation.

The Applicant on the other hand contends that the Respondent is the Plaintiff Civil Suit No. 897 of 2021 wherein he had sued several parties and therefore an application for security for costs against the Respondent is justifiable.

Resolution of the objection.

Order 26 Rule1 of the Civil Procedure Rules provides that, "The 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 instant case, the Applicant asserts that he is a Defendant in Civil Suit No.897 of 2021 where the Respondent had sued different parties. The Respondent on the other hand contends that the Applicant lost the right to claim for security for costs immediately the suits were consolidated. The question that begs an answer therefore is whether consolidation of suits debars the Defendant from claiming for security of Cost?

In the instant case the Respondent, Ssenyonjo Robert, instituted Civil Suit No.897 of 2021 against the Applicant (Defendant) and 8 others. Prior to that the Applicant, Raymond Opolot Oguluka, (Applicant) had also filed Civil Suit No.846 of 2021 against Robert Senyonjo in respect of the same suit property

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or land. The summons were served upon him and instead of filing a Written Statement of Defence he filed Civil Suit No.897 of 2021 against the Applicant in this application. On 7th June 2021, the Respondent (defendant) in Civil Suit No.846 of 2021 and Plaintiff in Civil Suit No.897 of 2021 filed Misc App No. 1462 of 2024 praying that the two suits be consolidated since the suit land in issue is the same and the two suits raise similar questions of law and fact.

In his affidavit in reply, the Respondent stated that he failed to file a defence out of time since he had concentrated in pursuing Civil Suit No.897 of 2021 where he was the Plaintiff. However, it is notable that the court found that the Respondent had sat on his rights to file his defence for 3 years and enlarged the time for filing a defence. The court allowed the application for consolidation as the (Respondent) now Applicant did raise any objection to the application, in other words the consolidation was conceded by the Applicant in the instant application. it is to notable to say that some of averments in Respondent's affidavit in this application are tainted with falsehoods. I would therefore overrule the objection.

Issue: Whether there are sufficient grounds for a grant of an application for security of costs against the Respondent?

Counsel for the Applicant submitted that security for costs is granted at the discretion of Court and that the main considerations to be taken into account in an application for security for costs were laid down by Ssekandi Ag. J., in Anthony Nambo and Anor versus Henry Kaala [1975] HCB 315 and in Hellen Aloyo Lugone Vs Roy Ogwok to include;

- a. Whether the Applicant is being put to undue expenses by defending a frivolous and vexatious suit;
- b. That he has a good defense to the suit which is likely to succeed.

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The Applicant's counsel submitted that the Applicant is being put into an unnecessary costs and expenses of defending a bad, frivolous and vexatious suit. That this can be seen from the plaint annexed to this application, where there is no scintilla proof of ownership of land in form of a sales agreement or certificate of title attached by the Respondent/Plaintiff to justify their claim of ownership.

That the Applicant has demonstrated under paragraph 2 of his affidavit that he bought the suit land and the sellers processed for him a special certificate of title upon payment of the full purchase price. He prayed that this Court finds this ground proved.

The Respondent's Counsel on the other hand took note of the decision in the case of Anthony Nambo supra and submitted that there is nothing to show that the Respondent's case is frivolous or vexatious since the Applicant has not raised any objections to that effect and that this Court should consider that it is the Applicant who first instituted a suit against the Respondent

and there after the Respondent also filed a suit against him and other parties. That this is an indication that there are serious questions of law and fact to be determined and the application for security for costs must not be used to oppressively stifle a genuine claim and that it would be unfair to order the Respondent to pay security for costs.

Learned counsel for the Respondent invited this Court to consider the observations of Hon Lady Justice Oliver Kazaarwe Mukwaya where she held that,

" I find that there is an inherent and pervasive danger in Courts entertaining applications for security for costs in land matters. To arrive at a decision on whether security for costs, the Courts must interrogate the question of whether the suit is frivolous or vexatious. In land matters such a decision can only be

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judiciously handled by hearing of the suit. Slapping the Plaintiff with an order of the Defendant's cost and thereby imposing an arbitrary cash as prerequisite to being heard, is in essence an act of grave injustice, in my view by taking such a step, the Court has already taken sides and lost its impartiality."

Decision of Court

The cardinal principle is that a person who asserts a claim should have access to justice, however, there are particular instances where he or she should be required to provide security because of the risk that the defendant may not recover his or her costs. In the instant case, I have carefully considered the submissions of both parties and note that the governing law in this case is Order 26 Rule1 of the Civil Procedure Rules. As rightly observed by both parties, the considerations for grant of an order of security for costs were spelt out in the case of Namboro & Fabiana Waburo versus Henry Kaala [1975] HCB 315 and these are:

- a. Whether the Applicant is being put to undue expenses by defending a frivolous and vexatious suit,
- b. That he or she has a good defense to the suit which is likely to succeed.

It is only after the above two elements have been considered that other factors like inability to pay may be taken into account and while determining whether the above two considerations have been proved, the observations of Oder JSC in G. M. Combined (U) Ltd versus A. K. Detergents (U) Ltd. SCC. A. No. 34 of 1995, are instructive. He thus observed; "In a nutshell, in my view, the Court must consider the prima facie case of both the Plaintiff and the 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 for costs and any other material available at this stage."

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I shall therefore proceed to determine whether the Applicant and the Respondent have a prima facie case by only looking at their respective pleadings and affidavits; and determine whether there Defendant/Applicant is being put to undue expense by defending a frivolous and vexatious suit.

It is trite that a Plaintiff should never be permitted to litigate on a claim which the Court is of the view that it is unlikely and leave the Defendant with no room for enforcement of his judgement and to avoid this, Courts normally consider the relative strengths and weaknesses of both the Plaintiff's and Defendant's cases. This however, does not require an exhaustive examination of the merits of the case but rather, on the face of the materials before it. Therefore in order to ascertain whether the Plaintiff or Defendant has a good chance of succeeding, I will review the decisions of *Frantonios Marine Services Pte Ltd v Kay Swee Twan* [2008] 4 SLR(R)224 at (50-51) and that of *R vs Ajit Singh s/o Vir Singh* [1957] EA 822 at 825 which defined a frivolous and vexatious suit as one that is; "Paltry, trumpery; not worthy of serious attention; having no reasonable ground or purpose."

In the instant case, both parties sued each other vide Civil Suits No.846 and 897 of 2021 claiming ownership of the suit land, which were consolidated. The Applicant claims that the suit is frivolous and vexatious on the grounds that the Respondent has not produced any evidence of ownership either through a certificate and sales agreement in his Complaint.

I observe that the Respondent in his Complaint under paragraphs 8:1:1 to 8.1.6 claims that the 2nd Defendant being the Administrator General was through a Court order Vide Civil Suit No.128 of 1990 authorised to administer the estate of the late Walusimbi Hamu which comprised of the suit land and based on the above order, the 2nd Defendant sold the suit land to him through his biological sister Ms. Miriam Nanyonjo in December 1997 and thereafter the

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Plaintiff/Respondent took possession and transfer forms were executed in his favour.

From the complaint, I surmise that the problems started creeping up when the 2nd Defendant being the Administrator General renounced its administration of the estate after which the 4th, 5th, 6th, 7th and 8th Defendants obtained letters of Administration Vide Administration Cause No.290 of 2012 for the residue of the estate and went on to sell the same land to the 1st Defendant.

In my view, the bone of contention is whether there was a valid sale between the Administrator General and the Respondent and whether the renunciation of the administration by the Administrator General affected what had already been sold. For that reason, I find that the suit is not frivolous and vexatious.

The argument that the Respondent is not domiciled in Uganda and therefore execution maybe difficult, is self-defeating in the sense that the Applicant had sued the Respondent first, he was able to serve Court process on him or his lawyers.

Having considered the above, I shall now address whether the Respondent will be unable to pay costs to the Applicant in case judgment in the main suit is passed against him.

I observe that apart from stating that the Applicant has faced hardships in executing the said ruling, there is no evidence of instruction of a court bailiff attached in the Court record to enable Court arise at a decision otherwise.

The Applicant asserts that the Respondent has no known property in Uganda or income or business and by the fact that he is not permanently domiciled in Uganda proved by his attendance of Court sessions online. The Courts have overtime emphasized that impecuniosity of the Plaintiff is not a basis on which they would order security for costs. The rationale is that an order for security for costs on this ground alone would prevent access to justice because of a party's

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pecuniary position despite the established principle that poverty must not be a bar to litigation as was mentioned in the case Gateway Land Pte Ltd v Turner (East Asia) Pte Ltd [1987] SLR (R) 746.

The law is that he who alleges must prove, therefore in the absence of any evidence advanced by the Applicant, this Court cannot make decisions based on speculation. The Respondent in his affidavit in reply stated that he is a citizen and resides in Uganda. I find that there would be no difficulty in executing a judgement against the Respondent as he is domiciled in Uganda.

In a nutshell, the Applicant's claims are watered down by the fact that he had originally instituted a case against the Respondent/defendant and anticipated all these difficulties but instituted the suit anyway. In the premises, this application is not sustainable and stands dismissed with costs to the Respondent.

Dated at Kampala this 27th day of June 2025.

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Christine Kaahwa

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