

UGANDA / JUDGMENT

# Sengozi v Mpagi & Ors (Miscellaneous Cause No. 061 of 2016) [2017]

## UGHCFD 19 (27 October 2017)

[2017] UGHCFD 19

## COURT

HC: Family Division (Uganda)

## BEFORE

Elubu, J

## CASE / FILE NUMBER

Miscellaneous Cause No. 061 of 2016

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THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT JINJA MISCELLANEOUS  
CAUSE No. 061 OF 2016 (ARISING FROM CIVIL SUIT No 212 of 2015)

WILSON SENGOZI

APPLICANT

VERSUS

MPAGI PETER KASULE

KALUNGI AHMED

JINGO MUHAMED

RESPONDENTS

MPAGI PETER KASULE (Administrator of the estate of the late Mikaeri Mukoloboza)

BEFORE HON. JUSTICE MICHAEL ELUBU

## RULING

This is an application by **Wilson Sengozi** for orders that the respondent's counter claim in Civil Suit No. 212 of 2015 be struck out and costs of the application be provided for.

The brief back ground is that the respondents were sued by **Wasswa Peter Welaga** and Kibuuka Patrick in Civil Suit No 212 of 2015. In their defence to the suit, the respondents set up a counterclaim, where the applicant here was added as the third defendant to the counterclaim.

The counter claim in respect of the applicant is that the 1<sup>st</sup> respondent here is the Administrator of the Estate of One Mikaeri Mukoloboza, his grandfather, who was given 10 acres out of the estate of one Ibrahimu Kigula and avers that he (the 1st Respondent) has a beneficial interest in Kyaggwe Block 101 Plot 60 out of which the applicants Block 101 Plot 4495 was created. It is the contention of the 1<sup>st</sup> respondent that Wasswa Peter Welaga, the plaintiff in the headsuit, fraudulently obtained his registration as the proprietor of this land on which the respondents had filed a caveat. The applicant was subsequently registered as proprietor of Plot 4495 Block 101 which is claimed to have been created out of Plot 60 and is part of the estate of Mikaeri Mukoloboza.

The respondents pray for cancellation of titles created out of Block 101 Plot 60. In the alternative, a declaration that the land comprised in Block 101 Plot 4495 belongs to the estate of the late Mikaeri Mukoloboza. There are several other prayers made which are not reproduced here.

The applicant denied these claims in his defence to the counterclaim. He states that the estate of the late Mikaeri Mukoloboza is entitled to 10 acres of land which are registered in the Administrator General's names and are available to the counterclaimant. He alleged that the caveat mentioned, fraudulently included Plot 4495 which was an afterthought. The process by which that caveat was filed is therefore challenged by the applicant.

It was stated that the Counter claimant has no valid interest in plot 4495 and his claims are false, baseless and unsupported by evidence.

It is against this background that the applicant filed this application on the grounds that the counterclaim does not disclose a cause of action against him; the suit is frivolous, moot and vexatious; that the respondents lack the locus standi to sustain the claim against the applicant; the subject is undervalued to justify a payment of less duty, hence the suit is not properly filed; and the particulars of the applicant have been mis-described.

The applicant in his affidavit in support of the application deposes that he bought the land from the 1<sup>st</sup> plaintiff. That the counter claimants allege that the land forms part of the estate of one Ibrahim Kigula their grandfather but have not attached any evidence to show that they are beneficiaries of his estate and failure to do so renders them unfit to sustain their claim to the estate. That the Administrator who administers the estate of the late Mikaeri Mukoloboza has confirmed that the 1<sup>st</sup> respondent's interest is well catered for and intact. It was available for his perfection and has never been alienated to anyone.

The applicant adds that his land is distinct from that of the counter claimants and the Administrator General has lodged a caveat for purposes of securing their interest. That the counterclaimant lodged a complaint, over the land, with the Commissioner Land Registration but the complaint was dismissed since it was marred with falsehoods. That the counterclaimant, if he was dissatisfied, has not followed the set procedure to challenge the findings of the Commissioner Land Registration.

He adds that the respondents have no interest in the applicants land, their claim is unfounded and as such they lack the locus to challenge the title. For that reason the suit is moot, vexatious and frivolous.

It is stated that the respondents have understated the value of the land at sixty million shillings \$(60,000,000/-)\$ for the purpose of defrauding the state of stamp duty. The respondents are well aware that the land is over 2,000,000,000 (two billion shillings) in value.

In reply the respondents swear that the suit is brought for the benefit of the estate of Mikaeri Mukoloboza which lays claim to the area currently comprised in plot 4495 and was at all times occupied by a caretaker of the estate of the late Mikaeri Mukoloboza. It is stated farther that the land was originally plot 60 which was subdivided into Plot 1291 and subsequently Plot 3652 out of which Plot 4495 was created.

That the Administrator General, in his letter referred to by the applicant, did not state the exact location of the 10 acres of land.

It is stated farther that notwithstanding the findings of the Commissioner Land Registration, the claim is in respect of illegalities committed by the plaintiff in the head suit which rendered void the applicant's title and which matters need to be determined by the High Court.

The respondent denies undervaluing the estate for purposes of the counterclaim. He states that the plaintiff gave the value in paragraph 7 of the plaint dated 25<sup>th</sup> of October 2013.

That the counter claim is genuine and discloses a cause of action, raises triable issues of law and fact which cannot be dealt with by preliminary objection.

In rejoinder the applicant reiterates that the 10 acres are available for perfection by the respondents and the confusion over the land was settled by the Commissioner Land Registration whose findings the respondent have not challenged.

The applicant denies the presence of a caretaker on the land and states that he is in occupation of the same as it belongs to him and the respondent has still not shown any proof of his interest in the land.

Lastly that the 1<sup>st</sup> respondent is aware of the value of the land having participated in a public hearing before the Commissioner land Registration in which the value was stated several times and was one of the main points of discussion.

When this matter came up for hearing, the parties were granted leave to file written submissions which are on record and will not be reproduced. The court will however closely refer to them as it resolves the questions here.

3

The issue is whether the respondents counter claim should be struck out.

It is true, as submitted by Counsel for the applicant, that the determination of this question is to be made exclusively from an examination of the pleadings.

The applicant submits that he is described as William Sengozi in the pleadings and yet the disputed land is in the names Wilson Sengozi. It is the respondent's submissions that it was a misnomer to refer to the applicant as Sengozi William instead of Wilson.

From an examination of the responses and pleadings of the applicant throughout this matter, it is clear that there is no ambiguity in his mind regarding the identity either of the subject or the party referred to in this dispute. There is absolutely no uncertainty that though he has been referred to as William Sengozi, it is Wilson Sengozi, registered as proprietor of Block 101 Plot 4495, they meant. He has suffered no embarrassment or prejudice by the mis-description and I would therefore agree with the respondents that it is a case of a misnomer and can be corrected by amendment.

Then the applicant questions the locus of the respondents and whether they can in law maintain their claims. He queries a lack of evidence by the respondents connecting them to the estate of Kigula Ibrahimu; that the land the respondent claims is well ascertained and it was only left for the respondent to perfect his interest; that the land owned by the applicant is distinct and separate from that claimed by the respondents.

The respondents on the other hand dispute these facts and allege fraud. It is also their assertion that the applicants land sits on what was originally Block 101 plot 60. There is, in addition, the question regarding the value of the subject matter.

Clearly there are assertions, denials and counter assertions in this matter. With facts hotly contested by either side it would be ill advised to make findings solely from an examination of facts gleaned from the pleadings. In these circumstances it would require a full inquiry/ investigation into the veracity of all these allegations for justice to be served in this matter.

A court should not ordinarily dispose of a matter on a preliminary point where the facts are in issue such as it stands here.

There is a query regarding the challenge by the respondent, of the conclusions of the Commissioner Land Registration, it is stated that the respondents did not follow the procedure laid down for a challenge of such a finding. It is however trite law that the High Court shall have unlimited original jurisdiction in all matters. In the circumstances the argument against the High Court handling the complaint against the Commissioner Land Registration cannot be sustained where it has the mandate to inquire into a matter of this nature.

The next question is whether the counter claim has disclosed a cause of action.

The applicant submits that the case of *Auto Garage vs Motokov* [1971] E. A. 514 lays out the three essential elements to support a cause of action. A plaintiff must show that he enjoyed a right; that right has been violated; and lastly that the defendant is liable. In this case the applicant questions whether the respondent has shown a cause of action in their counter claim and contests the

respondents interest in the estate of the late Ibrahim Kigula, or whether the land in dispute falls within the 10 acres allegedly bequeathed to one Mikaeri Mukoloboza from whose estate the 1<sup>st</sup> respondent claims.

Determining whether indeed there is a cause of action should ordinarily be done by examining the plaint (Counter claim in this case) without considering the defence.

The respondents allege their interest in the land was well demonstrated in the counter claim. Prima facie this court finds that the counter claim discloses a cause of action alleging the suit land, Plot 4495, was originally part of Plot 60 which the counterclaimant states they should own and which was fraudulently transferred to the applicant. This matter merits a proper examination of the evidence for the court's determination one way or the other

In sum this application shall not be granted and is accordingly dismissed with costs.

Michael Elubu 27.10.17

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