

5

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
[COMMERCIAL DIVISION]
MISCELLANEOUS APPLICATION NO. 741 OF 2023
[ARISING FROM CIVIL SUIT NO. 1068 OF 2022]

10

NABUNYA SHADIA MUWANGA] **PLAINTIFF**

VERSUS

15

EQUITY BANK UGANDA LIMITED] **DEFENDANT**

AND

[ARISING FROM CIVIL SUIT NO. 137 OF 2023]

20

KIBIRIGE ALI MUWANGA [AS ADMINISTRATOR]
OF THE ESTATE OF THE LATE BULAIMU] **PLAINTIFF**
MUWANGA KIBIRIGE]]

VERSUS

25

1. MUWANGA HARUNA KIBIRIGE]
2. MUWANGA BAIGA SOPHIA]
3. NABUNYA SHADIA MUWANGA] **DEFENDANT**
4. EQUITY BANK UGANDA LIMITED]
5. COMISSIONER LAND REGISTRATION]

30

Before: Hon. Justice Ocaya Thomas O.R

RULING

35 Introduction

This is an application seeking orders for consolidation of HCCS 1068/2022 together with HCCS 137/2023. The Application heading is a miswritten but the application is brought by Equity Bank Uganda Limited [“EBUL” or “The Applicant”].



5 **Background**

The Applicant contends that on 21 January 2022 it advanced a loan facility to HRN Business Services Limited of UGX 2,000,000,000 secured by land described as LRV 4571 Folio 5 Plot 15 Upper Naguru Road [“the suit property”]. The borrower defaulted on its loan obligations which led the Applicant to begin recovery processes, by way of foreclosure to recover the loan sums then totaling to UGX 2,547,117,790.

On 9 December 2022, Shadiya Nabunya Muwanga [“SNM”] filed HCCS 1068/2022 [“Suit 1”] challenging the validity of the Applicant’s mortgage over the suit property and the same suit is pending before this court. Seeking interim reliefs, the plaintiff in Suit 1 filed HCMA 1744/2022, HMCA 1743/2022 and Miscellaneous Appeal 52/2022 seeking to halt the intended sell of the suit property and all these applications were heard and determined in favour of the Applicant.

Subsequently, on 13 February 2023, Ali Muwanga Kibirige [“AMK”] commenced HCCS 137/2023[“Suit 2”] against the Applicant and four others seeking, inter alia, a cancellation of the Applicant’s mortgage over the suit property. AMK then filed HCMA 245/2023 and HMCA 246/2023 seeking to halt foreclosure and the latter application was determined in AMK’s favour while the latter application is pending determination and has never been determined due to the recusal of the judicial officer previously in conduct of the same from the matter.

According to the Applicant, Suit 2 had been previously allocated to Her Lordship Harriet Grace Magala but her Lordship recused herself on 25 April 2023 due to a conflict of interest. Accordingly, neither Suit 2 nor HCMA 245/2023 has advanced since the above steps. For Suit 1 however, the parties are in the process of filing their trial documents.

The Applicant contends that both Suits 1 and 2 raise similar points of law and fact which can be entertained at the same time, that both suit relate to the Applicant’s mortgage over the suit land and that a consolidation would avoid a multiplicity of suits.



5 The Application was not contested by the plaintiff in Suit 1 namely SNM. The Application was, however, opposed by AMK, the plaintiff in suit 2. According to AMK, the subject matter of Suit 2 is that (1) the suit land was registered in the name of Bulaimu Muwanga Kibirige [“BMK”] before the same fraudulently transferred into the name of SNM and the other defendants and subsequently mortgaged, (2) the gist of
10 the claim in suit 2 is that both the transfer of proprietorship of the suit property and the consequent charging of the same with a legal mortgage in favour of the Applicant were illegal and both entries ought to be cancelled while on the other hand, in Suit 1 the SNM seeks orders for cancellation of the mortgage without diving into how she and others got registered on the same property as proprietors. The Applicant
15 contends that the two suits cannot be consolidated without compromising his interest in Suit 2.

Representation

The Applicant was represented by M/s Katende, Ssempebwa & Co. Advocates while
20 the AMK was represented by V. Agaba & Co. Advocates.

Evidence and Submissions

The Applicant led evidence by way of an affidavit in support deponed by Isha Baguma, a Senior Legal Officer of the Applicant. AMK deponed an affidavit in reply in
25 opposition to the application.

Both sides with leave of court filed written submissions in support of their respective cases for which I am grateful. I have however felt no need to reiterate the same here, save that I have read the same and I thankful to both counsel.
30

Decision

Order 11 Rule 1 of the Civil Procedure Rules provides thus

“Where two or more suits are pending in the same court in which the same or similar questions of law or fact are involved, the court may, either upon the application of one
35 of the parties or of its own motion, at its discretion, and upon such terms as may seem fit—

(a) order a consolidation of those suits; and

5 (b) direct that further proceedings in any of the suits be stayed until further order.”
Consolidation of suits is a judicial discretion. See **Prince Balera & 7 Ors -v- Attorney
General & Anor HCMA 176/2017**

Where a court is empowered with a discretion, the court should determine whether
10 or not to exercise that discretion on the basis of clear principles. See **Mulindwa
George William v Kisubika Joseph SCCA 12/2014**

The principles guiding the consolidation of suits were laid out in the long-standing
decision in **Stumberg & Anor -v- Potgieter (1970) 1 EA 323** where the court held
15 that 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 defenses in each action.

20 Accordingly, for consolidation of suits to occur, there must

(a) Exist two suits pending before the same court

(b) The same or similar questions of law or fact are in issue in both suits

See **Prince Balera & 7 Ors -v- Attorney General & Anor HCMA 176/2017, Kilembe
25 Mines v Jinja District Land Board & Ors HCMA 139/2020**

Consolidation is underpinned by the judicial policy of avoiding a multiplicity of suits
through various judicial devices such as consolidation of suits, amendment, omnibus
proceedings or joinder. See **Mohan Musisi Kiwanuka vs Asha Chand SCCA No.
30 14/2002, Kilembe Mines v Jinja District Land Board & Ors HCMA 139/2020,
Ayissa Namiro v Uganda Marines Products Limited & Anor HCMC 78/2015.**

I have reviewed the pleadings in both suits and have made the following observations

(a) Both suites deal with the same subject property namely LRV 4571 Folio 5 Plot
35 15 Upper Naguru Road;

(b) Both suites involve a proprietary claim (a leasehold interest and/or a
mortgage);

- 5 (c) Both suites challenge an alleged fraudulent disentanglement to a proprietary claim;
- (d) The determination of Suit 2 has an effect of Suit 1;
- (e) Both suits involve at least one similar party, namely the Applicant.

10 As noted above, Suit 2 alleges that the defendants therein, including SNM had no right to deal in the suit land at all. In suit 1, SNM claims that the suit property was fraudulently mortgaged. The sum total of the allegations in both suits is that the Applicant's mortgage over the same property is illegal and incapable of enforcement. It therefore means that the determination as to the entitlement to deal in the suit land
15 and the question of the legality of the mortgage should be dealt with by the same court and in the same proceedings. This is also because, from the allegations by AMK the mortgage is only one transaction in a fraudulent series of transactions. It would therefore defy logic to treat these alleged phases of the "fraud" separately when they form part of one transaction involving the same or similar parties.

20 Moreover, it has not been alleged nor can I find evidence that the subject suits involve complex and convoluted matters which cannot easily be handled in the same proceedings. In such circumstances, the opposition to consolidation would have carried some weight. See **Rebecca Nduta -v- Invesco Insurance; Company Cause**
25 **1844 of 2011**

30 However, in the present case, no such complexity exists and the facts alleged in the pleadings appear to form part of one transaction which has been expressed in series reflected in the two suits and therefore deserving of "unification" and simultaneous hearing and determination in one proceeding. Accordingly, I return the finding that an order of consolidation of both suits is both legally permissible and the most appropriate course of action in the circumstances.



35

5 **Conclusion**

In conclusion, I make the following orders:

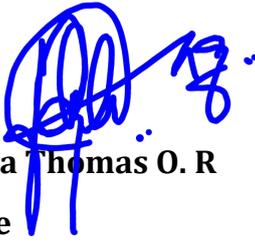
- a) HCCS 1068/2022 [Shadiya Nabunya Muwanga v Equity Bank Uganda Limited] and HCCS 137/2023 [Kibirige Ali Muwanga v Muwanga Haruna Kibirige & Ors] are hereby consolidated.
- 10 b) This court shall, at the next date of consolidated Civil Suits 1068/2022 and 137/2023 give further directions for management of the consolidated suits.
- c) Costs of this application shall be in cause.

I so order.

15

Delivered electronically this 5th day of March 2024 and uploaded on ECCMIS.

20


Ocaya Thomas O. R
Judge

5th March 2024

25