

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(LAND DIVISION)**

MISC APPLICATION NO. 0339 OF 2016

[ARISING FROM CIVIL SUIT NO. 202 OF 2014)

NYENDE DAVID MARTIN:.....APPLICANT

VERSUS

**THE REGISTERED TRUSTEES OF
KAMPALA ARCHDIOCESE :.....RESPONDENT**

Before: HON. MR. JUSTICE HENRY I. KAWESA

RULING

The Applicant by Notice of Motion moved Court for orders that;-

- i) *the Decree of the Court dated 22nd June 2015 and the Certificate of Taxation dated 27th August 2015 be set aside.*
- ii) *the dismissed application No. 531 of 2014 be reinstated and heard on merit.*
- iii) *execution proceedings be stayed/set aside and costs be stayed/set aside and*
- iv) *Costs be provided for.*

The motion is grounded on the affidavit sworn by Nyende David Martin.

The Respondent by an affidavit in reply sworn by Lutete Denis opposed the application on grounds that the Applicant has no reliable defence to warrant the issuance of the orders sought for.

During the hearing, Counsel for the Respondent raised a Preliminary Objection on grounds that the application contravenes Section 6 of the Civil Procedure Act; since the applicant had a similar application in the Execution Division which also seeks to set aside and to stay execution under Misc. Application No. 241/16 and Misc. Application No. 242/2016. The said applications are seeking the same orders as sought in the application before this Court

yet they are not yet disposed of. He argued that the current applications are therefore an abuse of Court process.

Counsel for the Applicant argued that by virtue of Section 6 of the Civil Procedure Act, the Court here would be barred from hearing this application. He prayed that it be dismissed with costs.

Counsel for the Applicant in response objected to the above saying that the applications were all filed in their right and do not offend Section 6 of the Civil Procedure Act.

I have perused the record and I do find that the Applicant filed Misc. Application No. 241/2016 arising from Civil Suit No. 2002/2014 of the Land Division, in the Execution Division on 15th December 2015, the said application was received on 12th February 2016 in the Execution Division. He also filed Misc. Application No. 242 of 2016, arising from Civil Suit No. 202 of 2014 also filed on 12th February 2016 which was received on 12th February 2016 in the Execution Division. He then filed Misc. Application No. 339 of 2016, arising from Misc. Application No. 531 of 2014 also arising from Civil Suit No. 202 of 2014 in the High Court Land Division.

A perusal of all these applications shows that they seek to stay/set aside execution under Civil Suit No. 202 of 2014 among others.

According to Section 6 of the Civil Procedure Act, it is provided that;

‘No Court shall proceed with the trial of any suit or proceedings in which the matter in issue is also directly and substantially in issue in a previously instituted suit or proceedings between the same parties or between parties under whom they or any of them claim litigating under the same title; where that suit or proceedings is pending in the same or any other Court having jurisdiction in Uganda to grant the relief claimed’.

From the above provision, clearly the Applicant filed the matter in the Execution Division way back in February 2016 and has not followed it up. The same issues he presents in Misc. Application No. 339 of 2016 in the High Court Land Division are the same issues which are pending trial in Misc. Application No. 242 of 2016 and Misc. Application No. 241 of 2016 in the Execution Division of the High Court.

This is a proper case where Section 6 of the Civil Procedure Act comes into play to debar this Court from entertaining Misc. Application No. 339/2016 as it is barred by law.

I accordingly uphold the preliminary objection raised and I find that this application is barred by law. It is accordingly dismissed with an order that the Applicant pursues the matter through the Execution Division of the High Court under Misc. Application No. 241 and 242 of 2016.

Costs of this application are granted to the Respondent.

I so order.

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Henry I. Kawesa

J U D G E

01/11/2017

01/11/2017:

M/S. Ninsima Doreen holding brief for Mr. Kabunga Patrick; Counsel for the Applicant parties present.

Clerk – Apollo

Court: ruling delivered in chambers

Before me:

Sgd:

Samuel Emukor
Deputy Registrar
01/11/2017