

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
LAND DIVISION
CIVIL SUIT NO. 599 OF 2016
ANNET NAMBOOZE MUSOKE ::::::::::: PLAINTIFF
VERSUS
NAMUTEBI CAROL ::::::::::: DEFENDANT

BEFORE: HON. LADY JUSTICE NALUZZE AISHA BATALA

RULING ON A PRELIMINARY OBJECTION.

Introduction:

1. This is a ruling on a preliminary objection raised by the defendant (now Applicant) that Civil Suit No. 599 of 2016 is res judicata.

Background;

2. The defendant had sued Joseph Kayizza in the Chief Magistrates Court of Makindye at Makindye vide Civil Suit No. 255 of 2009 for trespass on land comprised in Kyadondo Block 266 Plot 1305 at Sseguku (*herein after referred to as the suit land*). The matter was heard and determined and Court gave orders inter alia;
 - a) A declaration is hereby pronounced that the suit land belongs to the plaintiff.



- b) An eviction order is henceforth issued against the defendant
- c) A permanent injunction is hereby issued restraining the defendant and or his agents, assignees and successors in title from trespassing on the suit land.
- 3.** The plaintiff filed HCCS No. 599 of 2016 claiming that the defendant had without the knowledge and consent of the plaintiff as the Successor and Administrator of the estate of the late Nambi Musoke Justine, processed the certificate of title for land comprised in Kyaddondo Block 266 Plot 1305 at Sseguku.
- 4.** That parties appeared for hearing on the 29th day of February 2024, where Counsel for the defendant raised a preliminary objection that the suit is res judicata, the matter was already adjudicated by a lower Court.
- 5.** Court directed parties to file written submissions in respect of the preliminary objection raised by Counsel for the defendant. However, only the Defendant/Applicant complied with Court's directions and filed written submissions.

Defendant's submissions;

- 6.** Counsel for the defendant submitted that the defendant was the plaintiff in Civil Suit No. 255 of 2009 in the Chief Magistrates

Court of Makindye at Makindye where she sued the now plaintiff's son Kayizza Joseph and the plaintiff in the instant case was called as a witness (DW3) and judgment was entered in favour of the plaintiff (now defendant).

7. Counsel relied on the provision of Section 7 of the Civil Procedure Act Cap 71 and the authority of **Boutique Shazam ltd v Norathan & Anor C.A.No.36 of 2007.**

Representation;

8. The plaintiff was represented by Mr. Lutaakome of M/s Lutaakome & Co. Advocates whereas the Defendant was represented by Mr. Arinaitwe Allan holding brief for Christine Mayanja.

Issues for determination;

Whether HCCS No. 599 of 2016 is res judicata?

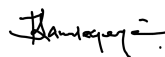
Resolution and determination of the issue;

9. **Section 7 of the Civil Procedure Act, Cap 71** provides that No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same

title, in a court competent to try the subsequent suit or the suit in which the issue has been subsequently raised, and has been heard and finally decided by that court.

10. In *Boutique Shazim Limited v. Norattam Bhatia and another, C.A. Civil Appeal No.36 of 2007*, it was held that essentially the test to be applied by court to determine the question of res judicata is this:, is the plaintiff in the second suit or subsequent action trying to bring before the court, in another way and in the form of a new cause of action which he / she has already put before a court of competent jurisdiction in earlier proceedings and which has been adjudicated upon? If the answer is in the affirmative, the plea of res judicata applies not only to points upon which the first Court was actually required to adjudicate but to every point which belonged to the subject matter of litigation and which the parties or their privies exercising reasonable diligence might have brought forward at the time.

11. For a claim of res judicata to succeed, the Defendant must prove that;



- i. The same parties litigating in the former suit should be the same parties litigating in the latter suit or parties under whom they or any of them claim.
- ii. A final decision on the merits has been given in the former suit by a competent court.
- iii. The suit or its subject matter must have been directly or substantially in issue in a former suit.
- iv. The parties should be litigating under the same title.
- v. The earlier suit must have been decided by a competent court and that court fully resolved the dispute. **(Yahaya Walusimbi v Justine Nakalanzi & 3 others MA No. 1942 of 2020)**

To resolve the issue, I will proceed by addressing each of the above points as below;

The same parties litigating in the former suit should be the same parties litigating in the latter suit or parties under whom they or any of them claim and the parties should be litigating under the same title.


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- 12.** The defendant was the plaintiff in Civil Suit No. 255 of 2009, whereas the plaintiff is a mother to Kayizza Joseph who was the defendant in the Chief Magistrate's Court at Makindye.
- 13.** Kayizza Joseph was sued as a trespasser since he assumed possession of the suit property on the orders of Annet Nambooze Musoke (plaintiff). Both Kayizza Joseph and Annet Nambooze Musoke claim interest in the suit land on the basis that it belonged to the late Nambi Musoke Justine, however the Chief Magistrates Court of Makindye at Makindye declared that the suit land belongs to the defendant.

The suit or its subject matter must have been directly or substantially in issue in a former suit.

- 14.** All parties are claiming the same subject matter which is land comprised in Kyadondo Block 266 Plot 1305 at Sseguku. The now plaintiff (Annet Nambooze Musoke) claims the suit land as the successor and Administrator of the estate of the late Nambi Musoke Justine and the defendant claims the land as the owner and registered proprietor of the same.
- 15.** Evidence was led in the Chief Magistrate Court of Makindye at Makindye that the late Nambi Musoke Justine only purchased the

suit property on behalf of the now defendant and the consideration was paid by the defendant's father. Upon hearing all the evidence as led by the parties Court declared the suit land to belong to defendant.

A final decision on the merits has been given in the former suit by a competent court and the earlier suit must have been decided by a competent court and that court fully resolved the dispute.

- 16.** Section 207 (1) of the Magistrates Courts Act gives the Chief Magistrate's Court unlimited jurisdiction in matters of trespass which made the Chief Magistrate Court a competent Court to handle and adjudicate Civil Suit No. 255 of 2009 thereby declaring the plaintiff (now defendant/Applicant) the owner of the suit land.
- 17.** The plaint in HCCS No. 599 of 2017 reveals that the suit is res judicata as the issue of ownership that the plaintiff seeks for Court to address was determined to its conclusiveness and the judgement has never been set aside.
- 18.** The Chief Magistrate Court of Makindye at Makindye heard all witnesses including the now plaintiff in the instant case who was a witness in Civil Suit No. 255 of 2009. 

19. From the reading of the plaint in HCCS No. 599 of 2017, the plaintiff prays for judgement to be entered in her favour for orders inter alia

- i. A declaration that the defendant is not the lawful owner of the suit land.
- ii. Cancellation of the defendant's certificate of title to the suit land.
- iii. An order of eviction from the suit land.
- iv. A permanent injunction restraining the defendant from entering upon the suit land
- v. General damages for trespass
- vi. Interest and costs.

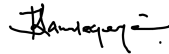
20. The crux of the matter is ownership of the suit land which question was resolved by the Chief Magistrates Court at Makindye. Kayizza Joseph, the defendant in the lower Court lodged appeal however the same was dismissed for want of prosecution. It is quite clear that the plaintiff seeks the indulgence of Court in matters that had already been adjudicated conclusively.

21. Litigation has to come to an end, Parties cannot be in Court over and over on the same issue. Kayizza Joseph ought to have

prosecuted his appeal and not the mother (now plaintiff) bringing a fresh suit to enforce the same rights, against the same person and in regards to the same subject matter.

22. For the afore going reasons, the preliminary objection succeeds and the suit is hereby dismissed and with costs of the suit awarded to the defendant.

I SO ORDER.



NALUZZE AISHA BATALA

JUDGE

16 /04/2024