

THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA CIVIL APPLICATION
NO. 254 OF 2015

ARISING FROM CIVIL APPEAL NO. 37 & 76 OF 2010

RESPECTIVELY

FRANCIS KIYAGA :::::::::::::::::::: APPLICANT/APPELLANT

V

1. JOSEPHINE SEGUJJA

2. WILBROD BIRABWA :::::::::::::::::::: RESPONDENTS

BEFORE HON. LADY JUSTICE CATHERINE BAMU6EMERE1RE,

JUSTICE OF APPEAL

RULING

An application for consolidation of appeals was filed before this court pursuant to rules 101, 43 and 44 of the Judicature (Court of Appeal Rules) Directions for orders that Civil Appeal No. 37 of 2010 and Civil Appeal No. 76 of 2010 be consolidated on the following grounds:-

1. Both appeals are pending before the same Court.
2. The parties in Civil Appeal No. 37 of 2010 and Civil Appeal No. 76 of 2010 are the same.

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3. The matters involve similar questions of Law.

4. The decision in Civil Appeal No. 76 of 2010 directly impacts on the decision in Civil Appeal No. 37 of 2010.

The grounds of this application are fully set out in the Affidavit of the Applicant/Appellant, Francis Kiyaga. The grounds for application state briefly as follows;

1. That, around June 1997, Kiyaga deposited a certificate of title to the land comprised in Kyadondo Block 232 plot 608 at Kireka with the 2nd Respondent as security for her to lend him money to capitalize his business.
2. That he paid back the money to the 2nd Respondent but unknown to him, the Respondent fraudulently transferred the land into her names claiming to have bought it from Kiyaga, whereas not.
3. That, Francis Kiyaga sued the 2nd Respondent in High Court Civil Suit No. 198 of 1999 Francis Kiyaga -versus- Wilbrod Birabwa for fraudulently registering his land into her names but the suit was decided in her favour and he appealed.
4. That, on the 21st February, 2001, while the above suit was still pending, the 1st Respondent in connivance with the 2nd Respondent fraudulently sold the suit land to the 1st Respondent, who transferred it into her names.
5. That, after the sale and transfer of the land to the 1st Respondent, the 1st Respondent sued Kiyaga for trespass and eviction from the suit land vide H.C.C.S No. 217 of 2001 Josephine Segujja -versus- Francis Kiyaga.
6. That before Civil Suit No. 217 of 2001 came up for hearing, it came to court's notice that Kiyaga had lost H.C.C.S No. 108 of 1999, which decision aggrieved me and I appealed.
7. That, because the decision in H.C.C.S No. 198 of 1999, directly affected the decision in H.C.C.S No. 217 of 2001 between Kiyaga and 1st respondent, the Court's decision accordingly declared Kiyaga a trespasser and he was ordered off the land. He too appealed the said decision under C.A No. 37 of 2010.
8. That, the issue of fraud between Kiyaga and 2nd Respondent awaits the results of his appeal against the 2nd Respondent and the decision in that appeal will automatically and directly affect the decision in Civil Appeal No. 37 of 2010 between Kiyaga and 1st

respondent.

9. That, Civil Appeal No. 37 of 2010 and 76 of 2010 are based on the same or similar facts and the parties are the same save the 1st respondent claims through the 2nd respondent.

10. That, under those circumstances, Civil Appeal No. 76 of 2010 between Kiyaga and the 2nd respondent, be tried before the trial of Civil Appeal No. 37 of 2010 between me and the 1st respondent.

11. That, given the above background, the hearing of Civil Appeal No. 37 of 2010 be stayed until the determination of Civil Appeal No. 76 of 2010.
12. He prayed, hence the two appeals be consolidated so that the issue of fraud of Respondents is determined once and for all.

This Application for consolidation was set down for hearing on 4th April 2016.

Mr. Charles Mbogo appeared for the Appellant and submitted that both parties had consented to the consolidation of both appeals. Neither the 1st Respondent nor her lawyer appeared. The 2nd Respondent who was present in court agreed with position set out by Mr. Charles Mbogo. Indeed this court notes that Mr. Charles Mbogo brought to court's attention an application by way of letter in which the Respondents wrote to the Registrar to have the two appeals consolidated.

Rule 101 of the Judicature (Court of Appeal Rules) Directions SI 13- 2010 provides as follows:-

101. Consolidation of Appeals

The Court may, for sufficient reasons order any two or more appeals to be consolidated on such terms as it thinks just, or may order them to be heard at the same time or one immediately after the other, or may order any of them to be stayed until... the determination of any other of them.

Under rule 101 the court may for any number of reasons order that any two or more appeals to be consolidated. The Court reserves the right to consolidate matters before it.

I find therefore that in this particular case, the Court has compelling reasons as to why these appeals should be consolidated. The reasons include the following;

1. Both matters are pending before the same Court.
2. The parties in Civil Appeal No. 37 of 2010 and Civil Appeal No. 76 of 2010 are the same.
3. The matters involve similar questions of Law.
4. The decision in Civil Appeal No. 76 of 2010 directly impacts on the decision in Civil Appeal No. 37 of 2010.

Having found compelling reasons to consolidate these appeals, this Court hereby orders that Civil Appeal No. 37 of 2010 and Civil Appeal No. 76 of 2010 be and are hereby consolidated.

This court further orders that the consolidated Appeals shall be heard at the same time.

Each party shall bear own costs.

It is so ordered.

HON.JUSTICE.Catherine Bamugemeriare

JUSTICE COURT OF APPEAL

8th April 2016