

IN THE HIGH COURT OF UGANDA AT MASINDI

MISC. APPLICATION NO. 38 OF 2019

(Arising Out Of HCCS NO. 43 of 2018, HCCS No. 0001 of 2013 and HCCS No. 17 of 2017)

1. KYOMUHENDO HARRIET

2. KAFUMU EVAN KATO:..... APPLICANT

VERSUS

1. KYALIGONZA EMMANUEL

2. NDAHURA KAFUME EDWARD:..... RESPONDENT

RULING

This application is filed under Order 11 r. 1 and 2 of the Civil Procedure Rules and seeking orders that

- a) Civil suit No. 43 of 2018, civil suit No. 0001 of 2013 and No. 17 of 2015 be consolidated,
- b) Further proceedings be stayed until grant of this order; and
- c) Costs of this Application be provided for.

The grounds of this Application are:

1. That civil suit No. 43 of 2018, 0001 of 2013 and 17 of 2015 are pending before this honorable court
2. That both suits involve similar questions of law and fact.

The application is supported by the affidavit of Kafumu Evans Kato

The Applicants were represented by Mr. Businge of M/s Madiinah & Co. Advocates while Mr. Yusuf Kagere of M/s Nyanzi, Kiboneka & Mbabazi Advocates represented the respondents

Briefly, the Applicants instituted Civil Suit No. 43 of 2018 against the Respondents/Defendants for declaration that the Letters of Administration of the late Evans Kafumu Nkoba were fraudulently, illegally/ or unlawfully granted to the defendants/respondents; an order for revocation/cancellation of the Letters of Administration separately granted to the defendant; an

order to file a comprehensive; and true and a correct inventory of the estate of the late Kafumu Evans Nkoba in accordance with the law. That through the affidavit in reply of the 2nd respondent it was discovered there are other 2 pending suits before this honorable court regarding the same questions of law and fact like the main suit to wit Civil Suit No. 0001 of 2013 Edward Ndahura Kafumu versus Moses Bategeka & 10 others the 1st Respondent being the 4th defendant and Civil Suit No 17 of 2015 Edward Ndahura Kafumu versus Isam Bategeka & 57 others the 1st Respondent being the 9th Defendant and the subject matter is that the Plaintiff is the Administrator of the estate of the late Evan Kafumu and the registered as a proprietor of land comprised in Bunyoro LRV 788 Folio 20 measuring 12.25 hectares situated at Busisi. The cause of action in both matters arises from mismanagement or intermeddling with the estate of the late Kafumu Evan Nkoba.

I have carefully considered affidavits in support of the Application and affidavit in reply. I have also carefully considered submissions of counsel for the applicant. The respondent did not file submissions in reply.

Counsel submitted that after filing Civil Suit No. 43 of 2018 they applied for an interim order and a temporary injunction and through the reply to the applications by the 2nd Respondent they discovered that there were still suits pending before this court to wit Civil Suit No. 0001 of 2013 and Civil Suit No 17 of 2015 which involve similar questions of law and fact like their suit and the subject matter is land comprised in Bunyoro LRV 788 Folio 20 measuring 12.25 hectares situated at Busisi. That the cause of action in both matters arises from mismanagement/or intermeddling with the estate of the late Evan Kafumu Nkoba. That it would be cost effect and convenient to both parties and court to dispose off the cases in the consolidate suit.

For ease of reference Civil Suit No. 43 of 2018 was filed by the applicants and it is all about Administration of the estate of the Late Kafumu Evan Nkoba and it is about distribution of the estate and the issue of the land comprised in Bunyoro LRV 788 Folio 20 measuring 12.25 hectares situated at Busisi. Civil Suit No. 0001 of 2013 was filed by the 2nd Respondent against the 1st Respondent and another and the gist of the plaint was the administration of the estate of the Late Kafumu Evan Nkoba and the issue of land in Bunyoro LRV 788 Folio 20 measuring 12.25 hectares situated at Busisi being part of the estate of the Late Kafumu Evan Nkoba. Civil Suit No 17 of 2015 was filed by the 2nd respondent against Isma Bategeka and others the 2nd

Respondent inclusive among the defendants and it was all about administration of the estate of the Late Kafumu Evan Nkoba and land comprised in Bunyoro LRV 788 Folio 20 measuring 12.25 hectares situated at Busisi, forming part of the estate of the late Evan Kafumu Nkoba. All the three suits are arising out of Administration Cause No. 731 of 2009 obtained by the 2nd Respondent from the Family Division of the High Court at Kampala and administration Cause No. 038 of 2010 obtained by the 1st Respondent from Chief Magistrate's Court of Hoima, both grants were to administer the estate of the late Evan Kafumu Nkoba. Therefore, I find that the 3 suits are based on administration of the estate of the late Evan Kafumu Nkoba and whether land comprises in Bunyoro LRV 788 Folio 20 measuring 12.25 hectares situated at Busisi forms part of the estate of the late Evan Kafumu Nkoba or the property of 1st Respondent.

The three suits are therefore based on similar facts and points of law. order 11 rr 1 of the Civil Procedure Rules provides that is to the effect that *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 of the parties or of its own motion, at its discretion and upon such term may seem fit order consolidation of suits and direct that further proceedings in any of the suits be stayed until further orders.* Under this rule, the court has discretion to consolidate suits pending in the same court if they are based on the same facts or questions of law. See: *Lwanga John Stanly Vs. Uganda Electricity Transmission Company Ltd HCMA NO. 464 of 2016.*

Since the subject matter in all the three suits are arising from the Administration of the estate of the Late Evan Kafumu Nkoba and ownership of Bunyoro LRV 788 Folio 20 measuring 12.25 hectares situated at Busisi, it makes sense for the three suits to be consolidated so as to ensure that all issues arising from the transaction between them with respect to this estate and property, are resolved.

The three suits will therefore be consolidated. The costs of the application will be in cause.



GADENYA PAUL WOLIMBWA

Judge

