

REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT TORORO
HCT-19-LD-CR-0005 OF 2022

ALLI MAISHALLA 5 ORS :::::::::::::::::::::::::::::::::::APPLICANT

VERSUS

BASHEZA RAMATHAN:::::::::::::::::::::::::::::::::RESPONDENT

RULING

BEFORE: HON. DR. JUSTICE HENRY I KAWESA

This matter was filed before me by Notice of Motion.

The matter (application) seeks orders *inter alia* revising a decision by the **Chief Magistrate Busia under Miscellaneous Application No. 43/2017** (*referred to as Miscellaneous Application No 43/2017*) for;

- i) Objector proceedings for a warrant to give vacant possession of the suit property and;
- ii) That costs of the application be provided for.

The Miscellaneous Application is supported by an affidavit filed by the Applicants. The complaint is that while dismissing the application, the Magistrate acted with material irregularity or injustice, and that the application is brought without delay.

The Respondent filed a reply which Counsel for the Applicant by a Preliminary Objection wants Court to struck out. I resolve the matters as here below:

1. Preliminary Objection on affidavit in Reply.

The Rules that govern pleadings are set out in the **Civil Procedure Rules**. Once the Defendant is served service must follow the strict position postulated in the Rules.

For emphasis the application before Court was generated by Notice of Motion. This is governed by **Section 83(c), and Order 52 Rule 3 of the Civil Procedure Rules**. The time required for a reply to pleadings generated as above is fixed to 15 days. This Court has held so many times in different cases guided by the principle in *Stop and See (U) Ltd versus Tropical Africa Bank Ltd; MA NO. 33 of 2012* and the case of *Spring Wood Capital Patroness Ltd versus Twed Consulting Co. Ltd (as quoted)* refers;

“that a reply or defence to an application has to be filed within fifteen days, failure to do so puts any defence so is sought”.

No leave was sought herein.

I do uphold the preliminary Objection.

2. The matter therefore is heard as if no reply was filed. The effect is that the Notice of Motion and affidavit in support are not rebutted. Given that position and following **Section 83 of the Civil Procedure Act**, I find that:

- (i) the Learned Trial Magistrate failed to take note of the fact that there was documentary evidence before Court that Applicants were in possession of the land subject of objection.

- (ii) I have noted the fact that Civil Suit No. 25/2016, 26/2016, and 6/2020 were dismissed by the Chief Magistrate on 23th November 2022.

I also take note of the fact that the Respondent has not addressed the issues raised constituting the failure by the Learned Trial Magistrate to address the matters before him.

In the result, I do find that this application is proved.

The grounds raised by the Applicant are noted and allowed in their entirety. The Applicant's land should be accordingly released from attachment.

Costs granted to the Applicants.

I so order.

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Hon. Dr. Henry I Kawesa
JUDGE
17/07/2023