

2. Costs of the Application be provided for.

The grounds upon which this Application is based are detailed in the Application and in the Affidavit in Support of the Application deposed by Catherine Bulya. I do not see the need to detail them here, but they are summarized as follows:-

1. **Civil Suit No. 099 of 2014** against the 1st Respondent for cancellation of all leases issued against part of its land in Walukuba Masese comprised in Plot M25A, M25B, M70, M24, M34, a permanent injunction to restrain the board and persons irregularly granted leases of the illegally curved off parcels of land, an order recalling all leases issued, damages and costs to the suit;
2. **Civil Suit No.13 of 2016** against the 1st Respondent for relief against forfeiture in respect of Land comprised in LRV 806 Folio 15 Plot M70 Jinja Masese, an order for cancellation of the re-entry, a permanent injunction, general damages and costs;
3. The Applicant also filed **Civil Suit No.009 of 2023** against the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th & 8th Respondents seeking orders for declaration that the Applicant is the lawful owner of land comprised in LRV 806 Folio 15 Plot M70, declaration that the 1st-5th Defendants illegally and fraudulently applied for and obtained certificates of Title on the land formerly comprised of in LRV 806 Folio 15 Plot M70 be consolidated.
4. The main two grounds prompting the action are that **Civil Suit No.99 of 2014**, **Civil Suit No.13 of 2016** and **Civil Suit No.009 of 2023** involve similar questions of law and fact relating to the ownership of the land comprised in LRV 806 Folio 15 Plot M70 Jinja Masese.
5. That the consolidation of the suits would avoid multiplicity of suits and would avoid contradictory orders being made and issued by this Honourable Court and to determine similar issues at once.

The Affidavit in Reply was deposed by Nurudin Yusuf. It is on record, by briefly, he averred that he had been advised by his lawyers which information he verily believed to be true and correct that the order for consolidation of **Civil Suit No.99 of 2014**, **Civil Suit No.13 of 2016** and **Civil Suit No.009 of 2023** is not tenable as the facts and reliefs sought in the above said three suits are totally different and the parties being different.

He went ahead in paragraphs 4 to 9 to give his reasons for the above.

THE LAW

Sections 33 of the Judicature Act Cap 33, provides that:-

“The High shall , in the exercise of the Jurisdiction vested in it by the Constitution , this Act or any written law, grant absolutely or on such terms and conditions as it thinks just, all such remedies as any of the parties to a cause or matter is entitled to in respect of ant legal or equitable claim properly brought before it , so that as far as possible all matters in controversy between the parties may be completely and finally determined and all multiplicities of legal proceedings concerning any of those matters avoided”.

Sections 98 of the CPA, Cap 71, provides that;-

“Nothing in this Act shall be deemed to limit or otherwise affect the inherent power of court to make such orders as may be necessary for the ends of justice
And

Order 11 of the CPR (1) and (2)

(1) 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 terms as may seem fit;

a) order a consolidation of those suits; and

b) direct that further proceedings in any of the suits be stayed until further order”.

(2) Applications under this Order shall be by summons in Chambers.

or to prevent abuse of the process of court”

Having stated the position of the law and rules of evidence, I will now turn to the substantive issues raised in this case as captured above and proceed to evaluate against the evidence on record.

RESOLUTION OF THE APPLICATION

In their Written Submissions, learned counsel for the Applicants submitted that the three suits contained similar questions of fact and law and relied on the case of ***Stemberg & Anor vs Potgieter (1970) EA 323*** it was held that:

“Consolidation of suits...should be ordered where there are common questions of law or fact in actions having sufficient importance in proportion to the rest of each action to render it desirable that the whole of the matters should be disposed of at the same time; consolidation should not be ordered where there are deep differences between the claims and defenses in each action.”

They also relied on **Prince Balera George & 7 Orthers vs Attorney General & Anor (Miscellaneous Application No. 176 of 2017) [2019] UGHCCD 109** Justice Eva Luswata had this to say:-

“In our law, consolidation of suits is permitted under Order 11(a) CPR. An order for consolidation can be initiated by any party or Court and may be allowed if the following are shown: -

- 1. There are two or more suits pending in the same court*
- 2. The same or similar questions of law or fact are in issue in both suits*

*It remains the discretion of the court to allow or decline the prayer for consolidation and it is also open to the court to direct that further proceedings in any of the suits is stayed until any further order is given. I do agree with Applicant’s counsel that the justification of consolidation is to avoid multiplicity of suits. See for example **Mohan Musisi Kiwanuka vs Asha Chand SCCA No. 14/2002** where it was held by Mulenga J (as he then was) as much as possible avoid multiplicity of suits. Thus, it is that rules of procedure provide for, permit where appropriate, joinder of causes of action and consolidation of suits.”*

They submitted that in the Affidavit in support of Application Catherine Bulya states thus:-

1. That the Applicant filed **Civil Suit No. 99 of 2014** against the 1st Respondent for cancellation of all the leases issued against part of its land at Walukuba Masese comprised in Plot M25A, M25B, M70, M24, M34, a permanent injunction to restrain the board and persons irregularly granted leases of the illegally curved off parcels of land, an order recalling all the leases issued, damages and costs to the suit.
2. That the Applicant also filed **Civil Suit No. 13 of 2016** against the 1st Respondent for relief against forfeiture in respect of the land comprised in LRV 806 Folio 15 Plot M70 Jinja, Masese, an order for cancellation of the re-entry a permanent injunction, general damages and costs.
3. That the Applicant further filed **Civil Suit No. 009 of 2003** against the 1st, 2nd, 3rd, 4th, 5th, 6th, & 8th Respondents seeking orders for declaration of lawful ownership of land comprised in LRV 806 Folio 15 Plot M70, declaration that the 1st – 5th Defendants have no interest whatsoever on, declaration that the 1st-5th Defendants illegally and fraudulently applied for and obtained certificates of title on the land formerly comprised in LRV 806 Folio 15 Plot Misc.70 in the presence of a Temporary injunction, declaration that the 6th Defendant illegally and fraudulently granted

freehold certificates of title on the land formerly comprised in LRV 806 Folio 15 Plot Misc.70 in presence of a pending suit challenging the purported re-entry, declaration that the 7th and 8th Defendants fraudulently obtained the certificate of title for the land comprised in FRV JJA 187 Folio 1 measuring approximately 2.4280 Hectares, permanent injunction, Mesne Profits, General damages, Punitive damages, costs of the suit.

They argued that from the evidence on record it is clear that there are two or more suits pending before this Honorable Court. That the only issue to determine is **whether there are the same or similar questions of law or fact are in issue in both suits.**

They therefore submitted that there are similar questions of fact and law in the 3 suits pending before this Honorable Court as averred by Catherine Bulya in her affidavit in support of the Application-See Paragraph 5 of the Affidavit in Support of the Application.

That **Civil Suit No.99 of 2014** and **Civil Suit No.13 of 2016** were consolidated by Consent of Counsel of Kilembes Mines and Jinja District Land Board as per Consent Order of 27th February, 2019 and endorsed by Court on 4th March, 2019. That the suits before this Honorable court all relate to land belonging to Kilembe Mines Limited. **Civil Suit No.99 of 2014** was for cancellation of all the leases issued against part of its land at Walukuba Masese comprised in Plot M25A, M25B, M70, M24, M3A, a permanent injunction to restrain the board and persons irregularly granted leases of the illegally carved off parcels of land, an order recalling all the leases issued, damages and costs to the suit.

Further, that during the pendency of **Civil Suit No.99 of 2014**, the 1st Respondent herein entertained Applications for Leasehold Certificates of title by 2nd to 6 Respondents. The 1st Respondent then purported to re-enter the suit land hence and the Applicant herein filed **Civil Suit No.13 of 2016** against the 1st respondent for relief against forfeiture in respect of land comprised in LRV 806 Folio 15 Plot M70 Jinja Masese, an order for cancellation of the re-entry, a permanent injunction, general damages and costs.

Again, that during the hearing of **Civil Suit No.99 of 2014**, the 1st Respondent granted leases to the 2nd - 6th Defendants who then applied for conversion of their leasehold certificates of title into free hold and transferred some of the titles to the 7th and 8th Defendants.

They therefore submitted that it is therefore clear that there are similar questions of law and fact in respect of the suits before this Honorable Court that warrant consolidation of the suits and having tried together.

That the issues all relate to the land belonging to Kilembe Mines Limited, Jinja District Land Board is the lessor and its actions are being challenged in all the suits above. The other Defendants /Respondents all derive their interest from Jinja District Land Board.

In reply, it was submitted by learned Counsel for the 1st Respondent submitted that he had read the submissions of counsel (for the Applicant), that in order to do that task, I have to look at the relevant case law; on the point of consolidation the case classics in the case of ***Stumpers & Another vs Potgieter [1970] EA 32***, that case discussed the question as to under what circumstances court will order consolidated of suits as under:

“A broad principle has emerged from English decisions relating to consolidation applications.

It is this -where there are common questions of law or fact in actions having sufficient importance in proportion to the matters should be disposed of at the same time, consolidated should be ordered.

That consolidated should not be ordered where there are deep differences between the claims and defenses in each action.”

That bearing in mind the principles laid down in this case (the 1st Respondent) oppose the Application and relied on the Affidavit of Mudawa Geoffrey - the Secretary of the 1st Respondents sworn at Jinja on 14th June 2023 and filed in court on the same day.

Further, that in the Application, the Applicant states in ground (d) of the Chamber Summons, that **Civil Suit No.99 of 2014, Civil Suit No.13 of 2016 and Civil Suit No.009 of 2023** involve similar questions of law and fact relating to ownership of land comprised in LRV 806 Folio 15 Plot No. M70 Jinja, Masese and in order to avoid multiplicity of suits, it seeks that the said suits be consolidated; however, the Applicant has not addressed court on the Defenses of the Defendants in the said suits.

They disagreed with the Application as per the matters raised in the Affidavit in Reply of Mudawa Geoffrey. That in paragraph 5 of the said Affidavit, Mr. Mudawa has averred that it is not correct to say, that all the 3 suits sought to be

consolidated have similar questions of law and fact; and in paragraph 7, he has averred that per information from his counsel, where there are deep differences between claims and defenses, court will not grant the order of consolidation.

Further that in paragraph 8 of the said Affidavit, the deponent has averred, that in **civil suit no.13 of 2016**, the plaintiff is seeking a relief against forfeiture and land, the Respondent is the Registered proprietor, we have annexed a copy of a search, it is annex (A) to the said Affidavit; per the said annexure, the proprietor/lessee of plot no 70, is Jinja District Land Board.

That the deponent has further averred in Paragraph 9 of the said Affidavit, that relief against forfeiture is sought or brought under the **Judicature Act** in fact it is **section 25 of the Judicature Act**, while the other claims are brought under the **Civil Procedure Act**, that is already a difference between the suits; and in paragraph 10 the deponent averred, that the considerations court will take into account in whether or not to grant the relief sought are different from the considerations court will take into account while handing **Civil Suit No.99 of 2023**, that in **Civil Suit No.13 of 2016**, court is bound to take into account, whether to grant the relief sought will cause injustice to the Defendant.

In addition, that the deponent had also averred in paragraph 11 of the said Affidavit, that in **Civil Suit No.13 of 2016**, the Defendant has pleaded that following its reentry into the suit land, it has allocated the suit land to various developers, who have acquired Freehold Titles out of what was land comprised in Plot No.M70; and relied on a copy of the said Written Statement of Defense is annexed TJJ on the said affidavit and it is marked, see the paragraph 6(f) of the said defense.

That it is the law, that the court has a discretion to grant or refuse the relief if it would cause injustice on the landlord, e.g. where the landlord has re- let the premises; for this proposition of the law cited the case of **Kiwanuka Musilu vs Segane [1973] EA 561-563**. That this kind of case should not be consolidated with a suit where the reliefs sought, it is for instance, a declaration of ownership of the suit property, which are the reliefs sought in the other suits see **Civil No.9 of 2023**, in **Civil Suit No.13 of 2016**, court will take into account the fact that if the suit land has been allocated to different developments, 3rd party interests have arisen; which will not be case in the other suits.

That the Deponent has averred in paragraph 13 of his Affidavit, that in **Civil Suit No.009 of 2023**, the 1st Respondent has filed a Written Statement of

Defense and I. Paragraph 6 thereof, it/1st Respondent has pleaded that **Civil Suit No.47 of 2012**, against **Lubaale Benon, Musisi Joseph, Musisi Joseph, Mulondo James, Bogere Edrin, Nambogwe Efulansi** on the same facts as or like the facts in **Civil Suit No.009 of 2023** was dismissed inter Alia under **Order 17 Rule 4 of the Civil Procedure Rules** on a Preliminary Point raised by counsel for the Defendants and that the said dismissal is as good as a decree and that the institution of **Civil Suit No.9 of 2023**, resurrecting the suit on the same facts, is bad in law and the suit ought to be dismissed with costs; and they annexed copy of the Written Statement of Defense in **Civil Suit No.009 of 2023** was annexed to the affidavit and it is marked.

That it is possible or even likely that **Civil Suit No.009 of 2023** could be disposed of on a Preliminary Point of Law; and for those reasons, this Application has failed to pass the test for an order of consideration of the suits sought to be consolidated; and should be dismissed with costs to the Respondents.

In reply for the 2nd, 3rd, 7th and 8th Respondents, they started with a brief background that the Applicants claim over the suit land has a chequered history. That following fundamental breach of the lease covenants by the Applicant in respect of the suit land and which lease has been seriously issued over the suit land that formerly belonged to the 2nd, 3rd, 4th Respondents father, a one Erizefani Balirwa the Applicants lease was terminated and the 1st Respondent re-entered the land.

Subsequently, that a number of freehold Titles were created out of the suit land which include Freehold Register volume JJA 187, Folio 1, Plot 18-22 DANIDA Road Masese 2 BUZAMA now registered in the names of the 7th and 8th respondent, seeking among other reliefs a declaration that the Applicant is the registered proprietor of the suit land.

That by an Order of this Honorable Court passed on the 7th day of April 2022, **Civil Suit No.0047 of 2012** was dismissed with costs to the defendants and the applicants in **Misc. App No.105 of 2020** and the Applicant has now brought this Application seeking consolidation of **H.C.C.S No. 009 of 2023 H.C.C.S No. 13 of 2016** and **H.C.C.S No.2014**. That like the 1st Respondent the 2nd, 3rd, 7th and 8th Respondent vehemently oppose the granting of the order sought as it is not tenable in law. That in strong opposition of the Application instant, the Respondents relied on the Affidavit in Reply deposed by the 8th Respondent filed on court record on the 15th day of June 2023 which has not been rebutted through an Affidavit in Rejoinder.

They argued that it is quite axiomatic that by the provision of the consolidation of suits is made, the Application seeking a consolidation must meet certain parameters as was clearly restated and emphasized in the locus classicus case of **Stumberg and another vs Potgieter** where it was held thus:-

“Consolidation of suits under 0.11 of the civil procedure (revised) rules 1948 should be ordered having sufficient importance in proportion to the rest of each action to render it desirable that the whole of the matters should be disposed of at the same time, consolidation should not be ordered where there are deep differences between the claims and defenses in each action.”

They submitted that the facts, the reliefs sought and causes of action as clearly stated in the said three suits that the Applicant seeks to be consolidated are totally different and present sharp differences. That paragraphs 3, 4, 5 of Yusuf Nurudins Affidavit in reply as clearly elucidated in the said paragraphs, the facts, reliefs sought and questions of law to be determined are totally different.

In addition, that on the other hand, in **Civil Suit No. 009 of 2023**, the Applicant seeks among other reliefs a declaration that it is the rightful owner of land comprised in LRV 80, Folio 15, plot M70, a declaration that it is the rightful owner of land comprised in LRV 806, Folio 15, Plot M70, a declaration that the 7th and 8th Respondents fraudulently obtained in the Certificate for land comprised in FRV JJA 187, Folio 1 plot 18-22 Land at Masese 2, BUZAMA Jinja City. They therefore submitted that the laws regarding reliefs against forfeiture and impeachment of a certificate of title on ground of fraud are totally different.

Equally, that the standard of proof in fraud is higher than is in ordinary civil cases; and additionally, the certificates of title referred to in **Civil Suit No.99 of 2014** are different from the Certificates of Title referred to in **Civil Suit No. 99 of 2023** in that in **Civil Suit No.99 of 2014**; the Applicant seeks the cancellation of lease titles. On the other hand, in **Civil Suit No.009 of 2023**, the Applicant seeks cancellation of a Freehold Certificate of Title which is an estate in fee simple.

That it should further be noted that the facts of acquisition of the suit land by the different parties involved in the matter are very distinct; and no Justice would be done if a consolidation is ordered as such consolidation would cause more

confusion than help the Honorable Court expeditiously handle and finally dispose the dispute involving all the parties.

Regarding the defenses, it is submitted for the respondents that the defenses in the said civil suits are very different in a multiplicity of ways on basis of law and fact; for instance, that in **Civil No.13 of 2016**, it is the 1st Respondent's strong defense that it acted lawfully and within the ambit of its statutory mandate as a lessor to terminate the Applicants lease and re-enter.

That in **Civil Suit No.009 of 2023**, it is the Respondents defense that the free hold titles created over the suit land now owned by different parties who include the 7th and 8th Respondents were legally created and no fraud whatsoever was committed by any of the Respondents/ Defendants. Yellow Jeep a copy of the WSD for the 2nd, 3rd, 7th and 8th Respondents hereto attached.

Further that paragraph 6 of Nurudin's Affidavit, it is averred therein that **HCCS No.009 of 2023** most likely to be struck out on ground being barred by law on a Preliminary Point. That as clearly averred under paragraph 15 of the Joint Written Statement of Defence of the 2nd, 3rd, 7th and 8th Defendants (Respondents), if the Honorable Court went ahead and ordered a consolidation of the three suits, the 1st, 2nd, 3rd, 7th and 8th Respondents would be denied their chance of raising the Preliminary Point of Law which has got high chances of success.

That considering the intricate nature and very different facts giving rise to the claim the causes of action and in the three separates units, it would be desirable that a separate trial of the suits be ordered than consolidating them and handled as one suit. They relied on the decision of High Court Commercial Division *in Misc.App No. 1758 of 2021 Sanjay Data vs Bank of India and 3 others*.

They therefore prayed that Application instant be dismissed with costs to the Respondents.

RESOLUTION OF THE APPLICATION

I have carefully heard this Application and taken time to examine the three Civil Suits that are intended to be consolidated. In our law, consolidation of suits is permitted under **Order 11(1) (a) CPR** (supra) and was expounded upon in **Stumberg & Anor vs. Potgieter (1970) EA 323** that:-

“Consolidation of suits....should be ordered where there are common questions of law or fact in actions having sufficient importance in proportion to the rest of each action to render it desirable that the whole of the matters should be disposed of at the same time; consolidation should not be ordered where there are deep differences between the claims and defenses in each action”.

The above has been followed in numerous other cases in Uganda. It remains the discretion of the Court to allow or decline the prayer for consolidation and it is also open to the Court to direct that further proceedings in any of the suits is stayed until any further order is given. I do agree with applicant’s counsel that the justification of consolidation is to avoid multiplicity of suits. See for example ***Mohan Musisi Kiwanuka vs Asha Chand SCCA No. 14/2002*** where it was held by Mulenga J (as he then was) inter alia that *“.....It is the cardinal principle in our judicial procedure that Courts must as much as possible avoid multiplicity of suits. Thus, it is that rules of procedure provide for, permit where appropriate, joinder of causes of action and consolidation of suits.”*

I have also carefully examined the three different suits which are the subject of this Application. By looking at the parties and pleadings in each case, it is clear that they involve similar questions of law and fact relating to the ownership of the land comprised in LRV 806 Folio15 Plot M70 Jinja Masese and the determination of the rights of the various parties who are all laying an interest in the suit property,

In this case, it must be noted that it is the same Plaintiff in all cases as rightly submitted by learned counsel for the Applicants; and all parties should not lose focus that Land by its nature is immovable property and regardless of the titling/numbers given to it, it still remains the same property on the ground, as such, whatever the competing and variant interests and or claims of each of the parties, it is obvious that the orders given in any of the above stated suits will have a profound effect on the rest of the suits.

Secondly, Courts should as much as possible avoid multiplicity of suits before this Honorable Court and determine similar issues at once as this will remove any likelihood of issuing contradictory orders by this Honorable Court in respect of the same suit land.

Thirdly, if any of the suits is already dismissed and there is no appeal to that decision, I do not see that as an order reinstating it; if anything, this shall be highlighted during the Scheduling of the cases after all the files related to the three suits are put before Court and all triable issues shall be properly identified.

As to whether in each case the parties differ or the burden of proof for fraud is higher, I still believe that Court is alive to that fact and will take that into stride when analyzing the evidence in respect of the claims of each party.

I therefore find that it is in the interest of justice to allow this application and it is clear that doing so is intended for the expediency of the disposal of all those suits and to meet the ends of justice.

- a) It is therefore my decision that **Civil Suit No. 099 of 2014, Civil Suit No.13 of 2016 and Civil Suit No.009 of 2023** be consolidated and shall be heard by the same Judge.
- b) I further order that the modalities of how the consolidation is to be effected will be agreed upon by the parties with the guidance of the Court during a Scheduling Conference that is to be fixed before the Registrar of this Court.
- c) As an outcome of the above decision, further hearing of these suits as separate actions is stayed.
- d) The costs of this Application shall abide in the outcome of the conclusion of the consolidated suits.

I SO ORDER

JUSTICE DR. WINIFRED N NABISINDE

JUDGE

20/11/2023

This Ruling shall be delivered by the Magistrate Grade 1 attached to the chambers of the Resident Judge of the High Court Jinja who shall also explain the right to seek leave of appeal against this Ruling to the Court of Appeal of Uganda.

JUSTICE DR. WINIFRED N NABISINDE

JUDGE

20/11/2023