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The Republic of Uganda

In the High Court of Uganda Holden at Soroti

Civil Suit No. 57 of 2019

(Arising from Civil Suit No. 57 of 2019 and Civil Suit No. 59 of 2019)

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Arnold Bernard Ongecu ..... Plaintiff

Versus

1. Peter Esabu }

2. Omodo Jesca }

..... Defendants

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Before: Hon. Justice Dr Henry Peter Adonyo

Ruling on a Preliminary Objection:

1. Introduction:


On 14/09/2023, when the matter came up for compliance with the court's  
20 directions/orders, counsel Philip Engulu for the defendants submitted to the  
court that they had a preliminary objection.

The Deputy Registrar, before whom the matter was, gave directions to the parties  
for filing written submissions on the preliminary objection.

On 16<sup>th</sup> November 2023, when the matter was for compliance, counsel Philip  
25 Engulu for the defendant submitted that they had filed their submissions on the  
preliminary objection, but they had not received any reply from the plaintiff.

The plaintiff's counsel – Omurangi, informed the court that the plaintiff would  
not file a reply to the preliminary objection. The matter was forwarded to me for  
a ruling on the preliminary objection.

30 The defendants' counsel submitted that the plaintiff's suit offends the *Lins Alibi*  
*Pendens Rule*.



5 That in 2014 the late Zerida Alaka and three others filed **Civil Suit No. 43 of 2014** challenging the plaintiff's ownership of the suit land which case is still pending to this day.

That in the year 2019 the plaintiff who was one of the defendants in **Civil Suit No. 43 of 2014** filed three suits in respect of the same land against persons who had  
10 bought portions of the said land from the late Zerida Alaka with full knowledge that those people had acquired land from Zerida Alaka. That the suits filed by the plaintiff included;

- a) **Civil Suit No. 58 of 2019 Arnold Benard Ongecu Vs. Eonya Julius,**
- b) **Civil Suit No. 57 of 2019 Arnold Benard Ongecu Vs Omodo Jessica and**
- 15 c) **Civil Suit No. 59 of 2019 Arnold Benard Ongecu Vs Esabu Peter.**

The defendants' counsel avers that he raised a similar preliminary objection in **Arnold Benard Ongecu vs Eonya Julius Civil Suit No. 58 of 2019** with the preliminary objection being sustained/ upheld.

The defendants' counsel contends that instead of the plaintiff withdrawing **Civil**  
20 **Suits Nos. 57 and 59 of 2019** he decided to consolidate them hence this instant suit.

The defendants' counsel avers that the plaintiff was sued by the late Zerida Alaka regarding the same subject matter vide **Civil Suit No. 43 of 2014** which is still pending in this Honourable Court and that the plaintiff is aware that the  
25 defendants claimed the suit property under the late Zerida Alaka who allegedly sold it to them.

The defendants' counsel asserts that whereas the plaintiff tries to hide these facts from his plaint paragraph 4 (a) of the plaint clearly states that the suit land is comprised in **FRV 1034 Folio 15 Plot 31 Block 7**, which is also the same subject  
30 matter in **Civil Suit No. 43 of 2014** which was between the plaintiff and the late Zerida Alaka and 3 others.

5 Counsel contends that in the plaintiff's witness statement filed on the 12<sup>th</sup> January 2023, the plaintiff brings out the fact that it was the late Zerida Alaka who sold the suit land to the defendants and that in paragraph 19 of his witness statement, the plaintiff states;

10 *"That the late Zerida Alaka sold land to the defendants very well knowing that the same had unsolved family issues between herself and I which issues the local leaders attempted to solve during several meetings."*

In Paragraph 23 of his witness statement, the plaintiff states, *"That when time passed, I was informed that my late stepmother Alaka Zerida had*  
15 *sold more than two plots of land without my knowledge and consent, but I could not believe."*

The defendants' counsel submitted that from the defendants' joint written statement of defence, they state that they purchased the suit land from the late  
20 Zerida Alaka in 2014, which was also reiterated in their witness statements filed on 11<sup>th</sup> September 2023.

To that end, counsel for the defendants contends that the land title in respect of the suit land known and registered as **Free Hold Register Volume 1034 Folio 15** by which the plaintiff claims ownership of the suit land is the same land which was  
25 contested in **Civil Suit No. 43 of 2014** where the plaintiff and Zerida Alaka were parties.

The defendants' counsel contends that it is evident that the defendants claim the suit land under Zerida Alaka and that the plaintiff knew of that fact before he filed the instant suit.

30 That it is also apparent that Zerida Alaka had a dispute with the plaintiff over the suit land and the case was already in court by the time the plaintiff purported to

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5 file the instant case which should not have been the case for was pointed by Hon. Mr Justice Bashaija K. Andrew in the case of ***Springs International Hotel Ltd Versus Hotel Diplomate Ltd & Boney M. Katatumba Civil Suit No. 227 of 2011*** a suit must be struck out a suit when it offends the *Lis Pendens Rule*.

Counsel also cited the case of ***Chemao Charles Versus Mulumba Mathias Civil Suit No. 0026 of 2020*** wherein a preliminary objection of this instant preliminary  
10 objection was upheld and as a result the suit was dismissed with costs.

Counsel reiterated the same in this matter and invited the court to follow its decision in ***Arnold Benard Ongecu vs Eonya Julius Civil Suit No. 58 of 2019*** to find that the plaintiff's suit offends the *Lis Pendens Rule*.

15 2. Determination:

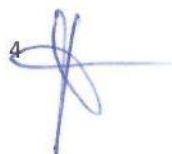
The background to this matter is that there have been indeed a number of civil suits brought up which forms the basis of the instant preliminary objection upon which the defendants' counsel prays for this court to determine on the basis of *lis pendens* rule and these are;

20 a) Civil Suit No. 43 of 2014:

This suit was filed by Igonyo Grace, Agwang Hellen and Alaka Pamela against Arnold Bernard Ongecu and the Registrar of Titles seeking for cancellation of a Certificate of Tile of Land comprised in FRV 1034, Folio 15, situate and styled as Plot No. 31, Soroti Block 7 at Madera, approximately 3.40 hectares, which was  
25 allegedly fraudulently issued to the 1<sup>st</sup> defendant by the 2<sup>nd</sup> defendant.

It was decided on 3<sup>rd</sup> October 2023 with the court holding that;

(a) ***The plaintiffs have the locus in quo to institute this suit in the positive and in the favour of the plaintiffs for they were part and parcel of the late Aomu Gabriel's family.***  
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- 5 (b) The land in dispute belonged to the late Aomu Gabriel who died intestate as  
no will was proved and the late Zerida Alaka, the plaintiffs and the 1<sup>st</sup>  
defendant are all beneficiaries of the estate of the late Aomu Gabriel.
- 10 (c) The certificate of title for the suit land which was obtained by Arnold Bernard  
Ongecu was fraudulently and therefore in line with Section 77 of the  
Registration of Titles Act, Cap 230, the Certificate of Title under instrument  
No. 448635, for the suit land comprised in FRV 1034 Folio 15 Area 3.40  
hectares, Soroti, Soroti district also known as Plot 31 Soroti Block 7 at  
Madera in the name of Arnold Bernard Ongecu of P.O. Box 40037, Kampala  
is hereby impeached.
- 15 (d) Registrar of Titles is ordered to cancel the certificate of land title comprised  
in Free Hold Register 1034 Folio 15 in the names of the 1st defendant, also  
situate and styled as Plot No. 31, Soroti Block 7 at Madera, approximately  
3.40 hectares.
- 20 (e) The suit land having been found to belong to the estate of the late Aomu  
Gabriel, to which the late Zerida Alaka, among others, was entitled, and the  
court having found undisputed evidence that the plaintiffs are still in  
occupation of the land, a temporary injunction is hereby issued restraining  
the 1st defendant from interfering with the plaintiffs' actual occupation of  
the land until the same is sorted through distribution of the estate property  
to its rightful beneficiaries.
- 25 (f) The suit land belongs to the estate of the late Aomu Gabriel and as such a  
temporary injunction is issued till the commencement of the process of the  
getting Letters of Administration in the estate of the late Aomu Gabriel and  
final inventory filed in court on how the estate of the late Aomu Gabriel was  
distributed or until this order is varied by the court.
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5       (g) *The plaintiffs are awarded UGX 8,000,000 (Uganda Shillings Eight Million) as general damages to be paid by the 1<sup>st</sup> defendant.*

      (h) *The plaintiffs being the successful parties here are also awarded the costs of this suit to be paid by the 1<sup>st</sup> defendant.*

      b) Civil Suit No. 57 of 2019:

10     This suit was filed by Arnold Benard Ongecu against Omodo Jessica seeking a declaration that the defendant trespassed on the suit land comprised in **FRV 1034 Folio 15 Plot 31 Soroti Block 7** land at Madera Soroti municipality, an order for vacant possession/eviction of the defendant from the suit land and/or compensation at current market value of the same, an order directing the  
15     defendant to demolish the developments thereon, a permanent injunction restraining the defendant from doing anything on the suit land, general damages for trespass, inconvenience and suffering, interest at a rate of 25% p.a and costs of the suit.

      In her written statement of defence, the defendant contended that on 21<sup>st</sup>  
20     November 2014, she purchased a plot of land in Central Cell, Madera ward, Northern division in Soroti municipality from the late Alaka Zerida, a stepmother to the plaintiff, to which she attached an agreement as annexure "A." She averred that the plaintiff never claimed the suit land during the lifetime of his stepmother, Zerida Alaka, despite seeing the defendant in full occupation of the same.

25     c) Civil Suit No. 59 of 2019:

      This was filed by Arnold Benard Ongecu against Esabu Peter, seeking a declaration that the defendant trespassed on the suit land comprised in **FRV 1034 Folio 15 Plot 31 Soroti Block 7** land at Madera Soroti municipality, an order for vacant possession/eviction of the defendant from the suit land and/or  
30     compensation at current market value of the same, an order directing the defendant to demolish the developments thereon, a permanent injunction

5    restraining the defendant from doing anything on the suit land, general damages  
for trespass, inconvenience and suffering, interest at a rate of 25% p. a and costs  
of the suit.

10    In his written statement of defence, the defendant contended that on 31<sup>st</sup> July  
2014, he purchased a plot of land known and styled as Plot 4B situated in Central  
Cell, Madera ward, Northern division in Soroti municipality from the late Alaka  
Zerida, a stepmother to the plaintiff, to which he attached an agreement as  
annexure "A."

15    He averred that he purchased the suit land under the watchful eye of the plaintiff  
who visited the land regularly and observed the defendant building his house  
from start to finish. The defendant also contended that the claims of title by the  
plaintiff are inconsequential as his purported land title was rightfully cancelled by  
this Court on 18<sup>th</sup> June 2019. To that end the defendant attached a cancellation  
order marked as "E".

20    The further perusal of the above files show that a case filed by the plaintiff styled  
as **Civil Suit No. 58 of 2019** by Arnold Benard Ongecu against Eonya Julius was  
dismissed by this court in a ruling delivered on 10<sup>th</sup> November 2021 on a  
preliminary objection raised by the defendant on the basis of its offending the *Lis*  
*Pendens* rule.

25    In that ruling, the court noted that the cause of action in **Civil Suit No. 58 of 2019**  
and **Civil Suit No.43 of 2014** was similar as it was in regard to a piece of land known  
and registered as **FRV 1034 Folio 15** by which the plaintiff claimed ownership and  
this was the same piece of land in **Civil Suit No. 43 of 2014** between the plaintiff  
and the late Zerida Alaka which was pending then in court.

30    **Civil Suit No. 58 of 2019** had a similar preliminary objection regarding offending  
the *lis pendens* rule disposed the matter.



5 On the other hand, **Civil Suit No. 43 of 2014** was decided on 3<sup>rd</sup> October 2023,  
then it means that the consolidated suits **Civil Suit No. 57 of 2019** and **Civil Suit**  
**No. 59 of 2019** (hereinafter “consolidated suits”) would be dismissed for being  
*res judicata* as they arise from the same matter and facts. That is, the suit land  
comprised in FRV 1034 Folio 15 Plot 31 Soroti Block 7 land at Madera Soroti  
10 Municipality.

This is because Section 7 of the Civil Procedure Act, Cap 71, stipulates that;

No court shall try any suit or issue in which the matter directly and substantially in  
15 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 had been heard and finally decided by  
the court.

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According to Section 7 of the CPA, the expression “former suit” means a suit that  
has been decided prior to the suit in question, whether or not it was instituted  
prior to it.

As deduced from the doctrine of *res judicata* to apply, it must be evident that the  
25 suit or issue raised was directly and substantially in issue in a former suit, the  
former suit was between the same party or parties under whom they or any of  
them claim, those parties were litigating under the same title, the issue in  
question was heard and finally determined in the former suit and that the court  
which heard and determined the issue was competent to try both the suit in  
30 which the issue was raised and the subsequent suit.



5 Further still, the case of *Kamunye & others vs. the Pioneer General Assurance Society Ltdd (1971 E.A 263* gives the test to be applied by the court to determine the question of *res judicata*. It states:

10 *"The test whether or not a suit is barred by res judicata seems to me to be – is the plaintiff in the second suit trying to bring before the court in another was and in the form of a new cause of action, a transaction which he has already put before a court of competent jurisdiction in earlier proceedings and which has been adjudicated upon. If so, the plea of res*  
15 *judicata applies not only to points upon which the first court actually required to adjudicate but to every point which properly belonged to the subject of litigation and which parties, exercising reasonable diligence, might have brought forward at the time. The subject matter in the subsequent suit must be covered by the previous suit, for res judicata to apply".*

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It is also trite that for a matter to be *res judicata*, the matter directly and substantially in issue must have been heard and finally disposed of in the former suit. See: *Lt David Kabarebe v. Major Prossy Nalweyiso C.A Civil Appeal No.34 of 2003*.

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According to the facts already outlined above, the consolidated suits of Civil Suits No. 57 of 2019, Civil Suits No.59 of 2019 and Civil Suit No. 43 of 2014 ; all are anchored to the same subject matter which is Land comprised in FRV 1034 Folio 15 Plot 31 Soroti Block 7 land at Madera Soroti Municipality.

30 The plaintiff in the two consolidated suits of Civil Suits No. 57 of 2019, Civil Suits No.59 of 2019 was the first defendant in Civil Suit No. 43 of 2014 which was regard

5 to FRV 1034 Folio 15 Plot 31 Soroti Block 7 land at Madera Soroti Municipality  
whose title was cancelled.

Furthermore, the defendants in their written statement of defence contend that they bought the suit land from Zerida Alaka, who was one of the former plaintiffs in **Civil Suit No. 43 of 2014** and who by reason of death was excluded from that  
10 suit but still the facts therein remained the same, that is, that the suit land was sold by her, Zerida Alaka, which issue was conclusively determined on its own merits in **Civil Suit No. 43 of 2014**.

I note from the submissions of the defendants' counsel references to the witness statements of the parties. The doing is erroneous as in preliminary objections,  
15 the parties ought to only consider the pleadings and their annexures and not witness statements which, though were filed in court, are not yet adopted by court as testimonies of any witnesses and ,therefore, it was erroneous for counsel for the defendants to refer to them because even then the plaint and the Written Statement of Defence were sufficient to find that the consolidated suits are  
20 barred by *res judicata* because the matter they seek to determine was conclusively determined by **Civil Suit No. 43 of 2014** wherein this court ordered among others cancellation of the certificate of title of land comprised in **FRV 1034 Folio 15 Plot 31 Soroti Block 7 land at Madera Soroti Municipality** which unfortunately the plaintiff in the consolidated suits seeks to rely on.

25 It thus becomes illegal for this court to proceed to hearing evidence arising from the already disposed of matter given the fact that the alluded to consolidated suits is illegality to which the case of ***Makula International Ltd v His Eminence Cardinal Nsubuga & Anor [1982] UGSC 2*** enjoins a court of law not to sanction that which is illegal.



5 As Donaldson,J also pointed out in *Belvoir Finance Co. Ltd. V. Harold G. Cole Ltd. (1969) 2 All E.R. 904 at 908*, an illegality once brought to the attention of the court overrides all questions of pleading, including any admission made thereon. From the foregoing facts above alone, it is clear that the consolidated suits of **Civil Suits No. 57 and 59 of 2019** clearly offend the *res judicata* rule because they seek  
10 determination of a matter which was conclusively settled in **Civil Suit No. 43 of 2014** which conclusively dealt with all the matter which are pleaded therein and which are similar.

In the end result, consolidated **Civil Suits No 57 and 59 of 2019** are found to be *res judicata* and thus would be dismissed with costs to be paid by the plaintiff  
15 who for attempting to mislead this court yet, when he was the 1<sup>st</sup> defendant in **Civil Suit No. 43 of 2014**, he was even represented by the same law firm in the matter which is already now concluded with his only option would be to appeal the decision in that matter rather than claim that consolidated **Civil Suits No 57 and 59 of 2019** was still pending yet not so.

20 Conclusion and Order:

For the reason given above I do uphold the preliminary objection raised and concluded that the consolidated suits **Civil Suits No. 57 and 59 of 2019** are *res judicata*.

Accordingly, both are dismissed with costs to be paid by the plaintiff for  
25 attempting to mislead court.

I so order.



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Hon. Justice Dr Henry Peter Adonyo

Judge

16<sup>th</sup> April, 2024