

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT SOROTI

MISC. APPLIC. 19 OF 2013

ARISING FROM A RULING BY HON. JUSTICE NAHAMYA IN

HCCS. 292 OF 2010 OCEN JULIUS & OTHERS V AG

HCCS . 9 OF 2012 IMODOT EDIM PAPRAS & OTHERS

HCCS 122 OF 2009 OLUKA JOHN & OTHRS V AG

MA 14 OF 2005 HON. OKUPA ELIJAH & OTHERS V AG

ATTORNEY GENERAL ...APPLICANT

V

JULIUS OCEN & 205,000 OTHERS

IMODOT EDIM PAPRAS & 105 OTHERS

OLUKA JOHN & 9 OTHERS

HON. OKUPA ELIJAH & 2020 OTHERS

BEFORE HON. LADY JUSTICE H. WOLAYO

RULING

Both counsel, Ms Patricia Mutesi for the applicant and Mr. Omongole for the respondent filed written submissions in compliance with my directions made on 6.11.2013 which i have given due consideration.

The applicant seeks leave to appeal the decision of Hon. Lady Justice Nahamya, in which she overruled preliminary objections raised by counsel for the applicant. The application is brought under section 33 of the Judicature Act, section 98 of the Civil Procedure Act and order 44 rule 1(2) , (3), (4) of the Civil Procedure Rules and article 126 (2) (e) of the Constitution.

The applicant gives the same grounds that were over ruled as grounds for leave to appeal. These grounds are contained in the affidavit in support of Batanda Gerald. These are:

1. CS 292 of 2010 is incompetent because it is in respect of alleged violations that occurred prior to 1995.
2. It is not just and equitable to determine CS 292 of 2010 as the plaintiffs' delay to enforce their rights is prejudicial to the applicant.
3. The four suits require the court to determine political questions.

The respondents filed an affidavit in reply opposing the application for leave to appeal.

Both counsel cited authorities on circumstances under which leave to appeal will be allowed. The case of Spear Motors Ltd v Attorney General & two others HCCS No. 692 of 2007 was cited by both counsel. The general principle is that leave to appeal will be allowed where , prima facie, there are grounds of appeal that merit judicial consideration or the intended appeal has reasonable chance of success, or if the decision sought to be appealed conclusively determines the rights of the parties.

I am in agreement with counsel for the respondent that the preliminary objections do not determine the rights of the parties at all.

As to whether the grounds of appeal merit judicial consideration or have a chance of success, i find that the respondents have causes of action which are within the jurisdiction of this court to entertain and they are not time barred. Furthermore, both parties will have an opportunity to raise the same points of law on appeal at an appropriate time.

In the premises, i dismiss the application with costs to the respondents.

DATED THIS 19TH DAY OF FEBRUARY 2014.

HON. LADY JUSTICE H. WOLAYO