

**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT JINJA**

**REVISION CAUSE NO. 001 OF 2013**  
(ARISING FROM CIVIL SUIT NO. 30 OF 2011 & 02 OF 2012)

**KAKUUMA GEOFFREY WANTANDA**  
(Suing as heir and beneficiary to the estate  
of the late WATANDA ZAKAYO CHRISTOPHER) ::::::::::::::: **APPLICANT**

**VERSUS**

1. **NTALE GRACE**
2. **KYANGU MARTIN** ::::::::::::::: **RESPONDENTS**

**BEFORE: THE HON. MR. JUSTICE GODFREY NAMUNDI**

**RULING**

This Application is brought under the provisions of law cited but specifically under section 83 and 98 of CPA and section 33 of the Judicature Act and is by way of Notice of Motion under Order 52 r.1 & 3 CPR.

It seeks orders that the;

- (a) Chief Magistrate's Orders made on 6/12/2012 in respect of Civil Suits 30/2011 and 02/2012 be revised and set aside.
- (b) That Judgment on admission be entered against the 1<sup>st</sup> Respondent (Defendant) in Civil suit 30/2011.
- (c) Costs.

The background to this application is that the Applicant filed Civil suit 30/2011 against both Respondents (Defendants then) seeking declaration orders that he is the lawful owner

of the suit land which had been sold by the 1<sup>st</sup> Respondent (Defendant) to the 2<sup>nd</sup> Respondent (Defendant).

While Defendant No.1 filed a defence virtually admitting the Plaintiff's claim, the 2<sup>nd</sup> Respondent instead opted to file a separate suit No. 2/2012 over the same land claiming for specific performance against the 1<sup>st</sup> Defendant claiming he had lawfully bought the suit land from the said 1<sup>st</sup> Respondent/Defendant.

The Chief Magistrate in his wisdom;

- 10 (1) Refused to record the 1<sup>st</sup> Defendant's admission in the written statement of defence as Judgment on admission.
  - (2) Stayed Civil suit 30/2011 stating that the said suit should await the outcome of suit 2/2012 filed much later than suit 30/2011.
- 15 It is this decision which is being contested as contravening section 83 of the Civil Procedure Act. Section 83 CPA gives the High Court the mandate to call for the record of the lower Court and make orders of Revision where the said lower Court;
- (a) Exercised jurisdiction not vested in it.
  - (b) Failed to exercise jurisdiction so vested in it.
  - 20 (c) Acted in exercise of its jurisdiction illegally or with material irregularity.

For the Applicant, it is submitted that in failing to enter Judgment on admission by Defendant No. 1 in Civil suit 30/2011, **Order 13 r.6 CPR** was contravened. This provision entitles a party to Judgment at any stage of proceedings where there has been admission of facts by pleadings or otherwise.

It is further submitted that when the Chief Magistrate ordered a stay of Civil suit 30/2011 in favour of a later suit 2/2012, this was in contravention of section 6 CPA which according to the Applicant is mandatory. That it is mandatory in that it bars any Court from proceeding with the trial of any suit in which the matter in issue is also directly and

substantially in issue in a previously instituted suit or proceedings between the same parties or parties under whom they or any of them claim, where the suit is pending in the same or other Court having jurisdiction to grant the relief claimed. Reference was made to **Makula International Ltd Vrs. H.E. Cardinal Nsubuga (1982) HCB 1**, whose  
5 import is that a court cannot sanction an illegality once brought to its attention.

It is accordingly claimed that the Chief Magistrate either failed to exercise jurisdiction so vested in his Court or acted with material irregularity in the exercise of the said jurisdiction.

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For the Respondent, it is submitted that the Magistrate acted within the inherent jurisdiction provided by section 98 of the CPA when he felt that a fair and just decision had to be made by staying suit 30/2011 and refusal to enter Judgment on admissions. Ref: **Standard Chartered Bank Vrs. Ben Kavuya and Barclays Bank (2006) Volume  
15 1HCB 134.**

It is argued that the Magistrate considered the circumstances of the 1<sup>st</sup> Defendants admissions in his written statement of defence and was convinced there was either collusion, fraud or bad faith in the said admission.

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Secondly, it is submitted that the subject matters in the 2 suits are very different. One is based on contract while the other is based on a declaration for ownership of the suit land.

Thirdly, that section 6 CPA is not mandatory as held in various authorities. These are:

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1. **Standard Chartered Bank Vrs. Ben Kavuya and Barclays Bank (2006) Volume 1HCB 134.**
2. **Oluka Matiya Suleiman Vrs. Change Moses HCCA 90/2009.**

That the import of the said decisions is ***that the existence of specific remedies to various issues no longer limits or restricts the exercise of inherent powers of court for the ends of justice to be realized.***

5 Reference was also made to **Election Petition 18/2007** where it was held that ***the use of the word shall is directory and not mandatory.*** That the provisions direct what ought to be done.

10 Finally that the 1<sup>st</sup> Defendant's admissions were fraudulent and therefore illegal and hence the Magistrate was right to refuse to comply with Order 13 rule 6 CPR.

I have considered submissions by both counsel.

15 I have no doubt that Courts are mandated to apply **section 98 CPA** to meet the ends of justice.

**Section 6 CPA** which directs the staying of subsequent suits over the same matter is given practical operation under the rules. Under **Order 11 r.1 CPR**, the Court may order consolidation of suits in which the same or similar questions of law or fact are involved.  
20 Once that is done, the Court may order that proceedings in any of the suits be stayed until further orders.

I am surprised that both counsel conveniently avoided this provision of law which would have re-solved this dispute. In a way the Magistrate had section 98 CPA in mind but also  
25 whether rightly or wrongly also considered Order 11 (1) (b) CPR.

I am not persuaded that the subject matter in each of the suits is distinctly different. Both disputes are based on the same/similar facts, the same suit land and the same parties.

Staying one of them in favour of the other was in my view a recipe for more confusion (as has now happened).

5 The Magistrate was very suspicious of the admissions by the 1<sup>st</sup> Defendant. However without evidence to the effect, he decided that the admissions were either fraudulent or dishonest. He accordingly declined to comply with **Order 13 r.6 CPR** in respect of admissions. He was right to be suspicious but that is exactly what it was - mere suspicion not based on evidence.

10 Ordering a stay of proceedings in suit 30/11 and to exclusively handle suit 2/2012 was in my view a wrong application of the law or misappreciation of the facts of the cases.

15 He should have instead consolidated the 2 suits, heard all the evidence and he would have been able to make relevant findings and order reliefs which would have resolved all the issues in the disputes.

The course of action he took in my view could easily lead to conflicting Judgments, if the cases proceed separately and more so should they be handled by different Magistrates.

- 20 It is my finding that the Magistrate failed to;
- (a) Exercise jurisdiction vested in him by staying suit 30/2011 over suit 2/2012.
  - (b) Exercised jurisdiction with material irregularity by arbitrarily staying suit 30/2011 over suit 2/2012 without supporting evidence that the admissions in suit 30/2011 were fraudulent.
  - 25 (c) Refusal to enter Judgment on admissions was an exercise of judicial discretion under the Courts inherent powers as provided by section 98 CPA. However, the exercise of the said inherent jurisdiction has resulted in material injustice and offers no solution to the disputes in suits 30/2011 and 2/2012.

This application is accordingly allowed in part. The orders staying the proceedings in Civil suit 30/2011 are set aside.

The following orders are made:

- 5        1. Both suit 30/2011 and 2/2012 are to be consolidated heard and resolved together.
  
2. The 1<sup>st</sup> Defendant's admission in the suit 30/2011 are to be investigated/verified by evidence rather than mechanically entering Judgment on admissions.
  
- 10       3. Costs to abide by the outcome of the said trial.
  
4. The files are sent back to the Chief Magistrate for trial through consolidation.

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**Godfrey Namundi**

**Judge**

**4/6/2014**

4/6/2014:

Jacob Osillo for Applicant

Kiiza for Respondent

5 Parties present

Court: Ruling read in Court.

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**Godfrey Namundi**

**Judge**

**4/6/2014**