

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

MISC. APPLICATION NO. 133 OF 2015

5

(Arising out of Civil Suit No. 061 of 2015)

1. **LYDIA NGANDA**
2. **MOHAMMED OLOBO**
3. **NAKALANZI ZAITUN**
- 10 4. **KIRUNDA**
5. **PASARASA ::**
:::::APPLICANTS

VERSUS

15

**ANITA
FERNANDES :: RES
PONDENTS**

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BEFORE: THE HON. JUSTICE GODFREY NAMUNDI

RULING

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This Application is brought under Section 98 of the Civil Procedure Act, Orders 36 Rule 3 (1) and 52 Rules 1 and 3 of the Civil procedure Rules. It seeks leave of this Court to be granted to the Applicants to defend Civil Suit No. 61/2015 pending in this Court.

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It is based on the grounds outlined in the Notice of Motion and the affidavit of Lydia Nganda (Applicant No. 1).

In brief, the Respondent sued the Applicants/Defendants for
5 recovery of the suit land as the registered owner of FRV
1368 Folio 11 which he acquired on 21/6/2015 under
Instrument No. 483191.

The Applicants contend that the suit property is subject of
10 expropriation and was formerly comprised in Leasehold
register volume 62 Folio 11.

That the property was vested in the Departed Asians
Custodian Board and allocated to the 1st Applicant on
15 20/12/2012.

That the property was formerly owned by non-Ugandans
under Leasehold Register Volume 62 Folio 11 and could not
be sold and transferred to the Respondent in Freehold
20 Tenure and hence the Title attached to the Plaintiff is
fraudulent and forged.

Further that the Title to the suit land does not reflect the
instrument of repossession which is mandatory and as such

the repossession Certificate on which the Respondent's claim is based is a forgery.

Finally, that a search at the Land Registry indicates that the land is still registered in the names of LAXMAN CHHANGALAL
5 KASANGARA & ANOTHER hence the Certificate of Title on which the Respondent claims is based is a forgery.

The affidavit of Lydia Nganda largely reiterates the grounds in the Notice of Motion.

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In Paragraph 8 thereof it is averred that the claims of fraud in the Application raise triable issues which Court should investigate at full trial.

15 The Respondent did not file an affidavit in reply. Ordinarily, the Application would have been considered unopposed.

At the hearing of the Application Mr. John Musiime for the Respondent claimed that he could respond to the Application
20 on points of law. I allowed him in the interests of justice.

Mr. Tebusweke for the Applicants made a brief submission reiterating the contents of the notice of Motion and affidavit in reply. Counsel for the Respondent submitted that the

Applicants have no locus standi to defend the suit for lack of protectable interest in the suit property.

5 What they have is a temporary letter of allocation and are neither leasees nor tenants - under the Registration of Titles Act.

10 Secondly, that the Applicants do not show that there are triable issues and have not attached a draft written statement of defence.

15 Considering the submissions of Counsel for the Respondent, instead of raising the points of law, he claimed he had a right to so raise, he delved into the merits of the Application - making submissions from the Bar with no supporting pleadings.

20 The points of law I expected him to raise should have been for example in respect of defects in the pleadings, filing of wrong documents or issues of time limits.

Without an affidavit or other pleadings, his submissions cannot stand and I disallow them.

I now consider whether the Applicants should be allowed to defend.

In **Home and Overseas Insurance Co. Ltd. Vrs. Mentor Insurance Co. (UK) Ltd. (1989) 3 ALL ER 74** (Cited by
5 Justice Madrama in **Mugoya Mawazi Vrs. Buyinza John - Misc. Application No. 1152/2014**), it was held by Parker L.J that the purpose of a Summary Suit is to enable the Plaintiff to obtain a quick Judgment where there is plainly no defence to the claim.....

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On the other hand, all that the Applicant needs to prove is that there are serious questions to be tried or a plausible defence to the action.

15 In the instant case, the Applicants are challenging the legality of the Respondent's claim to the suit property. They are challenging the Title. They also have a temporary allocation.

20 Much as the Respondent claims to have a Title and hence is protected by Section 54 of the Registration of Titles Act, the said Title is being challenged as having been obtained by fraud.

By the Applicants holding a temporary allocation, they may have no registerable interest but they have an equitable interest in the property. These are triable issues that need to be investigated by the Court.

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I accordingly allow this Application and grant the Applicants unconditional leave to defend. They should accordingly file their written statement of defence within 15 days from the date of this Order. Costs will be in the cause.

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Godfrey Namundi
JUDGE

15 29/7/2015: John Musiime for Respondent
 Respondent absent
 Applicants present

Court: Case for Ruling.

20 Counsel: We are ready to receive it.

Applicants: Our Lawyer is not well.

Court: Ruling delivered in open Court.

Kanyange Susan

25 **Ag. Asst. Registrar**

29/7/15

John Musiime: We intend to appeal, we seek for leave.

5 Court: Judge will determine that.

Kanyange Susan

Ag. Asst. Registrar

10 **29/7/15**