

**IN THE HIGH COURT OF UGANDA AT KAMPALA**

**CIVIL DIVISION**

**MISC. APPLICATION NO. 464 OF 2016**

**(ARISING FROM CIVIL SUIT NO. 175 OF 2012 AND NAKAWA HIGH COURT CIVIL SUIT NO. 938 OF 2015)**

**LWANGA JOHN STANLEY.....APPLICANT**

**V**

**UGANDA ELECTRICITY TRANSMISSION COMPANY LTD.....RESPONDENT**

**BEFORE HON. LADY JUSTICE H. WOLAYO**

**RULING**

The applicant through his advocates Katende, Ssempebwa & Co. Advocates seek an order to consolidate Civil Suit No. 175 of 2012 and Civil Suit No. 938 of 2015 between the same parties.

The application was brought under order 11 rules 1 and 2 of the CPR and supported by the affidavits of the applicant.

The respondent represented by Katera & Kagumire Advocates opposed the application on grounds contained in the affidavit in reply of Martin Erone .

I have carefully considered affidavits in support, rejoinder and in reply. I have also carefully considered submissions of counsel for the applicant. The respondent did not file submissions in reply.

It is the applicant's case that the two suits are based on similar facts and points of law. According to the affidavit in support and rejoinder and the joint scheduling memorandum, the respondent entered into an agreement in which it secured an easement from the applicant over his land at a consideration of 56m that was paid on 11.5.2009 but a similar sum was paid on 30.12.2009 .

It is this second sum for which the respondent claims a refund in CS 175 of 2012.

CS 938 of 2015 has not been scheduled but the applicant in the suit is the plaintiff and he claims general damages from the respondent in detinue of his land titles for the land over which easements were secured by the respondent .

The issue is therefore what was agreed upon between the parties when the easement was negotiated.

The respondent opposed the application to consolidate on the ground that it is frivolous and that the two suits do not involve similar facts and questions of law because in CS 175 of 2012, the respondent claims for a refund but in CS 938 of 2012, the applicant claims for damages.

Under order 11 rr 1 and 2, the court has discretion to consolidate suits pending in the same court in which the same facts or questions of law are involved. Counsel for the applicant cited authorities in support that re-affirm the power of court under order 11 rr 1 and 2 and the basic requirement for the court to exercise that power.

It is apparent to me that as Block 183 plots 55 and 69 located at Busozi bulongo is the property involved in both suits and the parties are exactly the same, it makes sense for the two suits to be consolidated so as to ensure that all issues arising from the transaction between the two with respect to this property, are resolved.

The two suits will therefore be consolidated.

Parties will prepare another joint scheduling memorandum that captures facts and issues from both suits.

Costs in the cause.

**DATED AT KAMPALA THIS 13<sup>TH</sup> DAY OF JANUARY 2016.**

**HON. LADY JUSTICE H. WOLAYO**