

THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT MASAKA  
CIVIL SUIT NO. 76 OF 2018

ERIA TANDEKA :: PLAINTIFF

VERSUS

1. THE ATTORNEY GENERAL OF UGANDA
2. NUWAGIRA STANLEY :: DEFENDANTS

*Before; Hon Justice Victoria Nakintu Nkwanga Katamba*

**JUDGMENT**

The Plaintiff instituted this suit against the Defendants for the following orders;

- i) A declaratory judgment that allocation of 80 acres of land to the 2<sup>nd</sup> Defendant of the 84 acres already allocated to the Plaintiff was fraudulent and null and void;
- ii) That the issuance of a lease offer both to the Plaintiff and the 2<sup>nd</sup> Defendant over the piece of land allocated to the Plaintiff was fraudulent in respect of the lease offer to the 2<sup>nd</sup> Defendant;
- iii) A declaration that the 2<sup>nd</sup> Defendant had no piece of land to bring under the registration of Titles Act I his names;
- iv) A declaration that the 2<sup>nd</sup> Defendant deliberately and fraudulently processed title over a piece of land well known it was in dispute;
- v) A declaration that the 1<sup>st</sup> Defendant is vicariously liable for the fraud committed by the Restructuring Ranch Scheme Kabula Masaka;
- vi) An order for cancellation of Titles or an order directing the 2<sup>nd</sup> Defendant to surrendered the Certificate of Title in issue and to sign forthwith transfer and mutation forms of the land in dispute in favor of the Plaintiff over the title issue;

- vii) An alternative order that the Ranches Restructuring Board of the Ministry of Agriculture Animal Industry and Fisheries re-allocates the Plaintiff another 84 acres of prime land of the Ranch Scheme or values in monetary terms the 84 acres allocated to the Plaintiff and forthwith promptly pays that value to the Plaintiff in cash so the Plaintiff can purchase another prime land of his choice elsewhere, and an order for general damages.

The Plaintiff's claim is that in June 1995, the Ranches Restructuring Board of the Ministry of Agriculture, Animal Industry and Fisheries allocated 84 acres of Ranch 16 of the scheme to the Plaintiff a squatter on the land since the 1970s. the plaintiff's land was surveyed in 1996 and he obtained a lease offer in 2001 for five years. The Plaintiff continued in possession and utilizing the land. That in 1997, the 2<sup>nd</sup> Defendant was brought onto the land from Ranch No. 8 and given the Plaintiff's land together with the lease offer over the same piece of land, by the coordinator of the Ranch Scheme and soldiers. The Parties were advised by State House to share the 84 acres and an agreement to that effect was made and the land was demarcated as such in 2009. The 2<sup>nd</sup> Defendant has since processed title to the entire 84 acres and successfully sued the Plaintiff in the Chief Magistrate for eviction, and a claim before State House in which the Plaintiff was pronounced as a trespasser over the suit land. The Plaintiff further contends that the move to give the said land to the 2<sup>nd</sup> Defendant was a fraud calculated to deprive the Plaintiff of the land allocated to him and that the 2<sup>nd</sup> Defendant connived with the Ranch Restructuring Board Officials to process title over the land.

In its Written Statement of Defence, the 1<sup>st</sup> Defendant denied the claim and stated that the suit is res judicata and that the Plaintiff's lease offer does not translate to a lease and hence the Plaintiff does not have an interest in the suit land.

In his Written Statement of Defence, the 2<sup>nd</sup> Defendant denied the claim and averred that the suit is res judicata. He stated that he is the rightful owner of the suit land comprised in RAK LAN 112/168, LRV3521 Folio 5, Ranch 16B, Masaka Ranching Scheme measuring approximately 32.3 hectares situate at Kabula. That the suit land was allocated to him in

1987 under the ranching program and he executed a lease agreement over the same on 21/03/2016 and obtained a certificate of title to the land. The lease is still running as it was extended for 44 years in 2001 after the initial duration of five years. That the Chief Magistrates Court of Masaka declared the 2<sup>nd</sup> Defendant as the rightful owner of the suit land vide Civil Suit No. 15 of 2010 and that judgment has never been appealed against.

Both Parties filed written submissions on the preliminary objection of res judicata raised by the Defendants. I will refer to the submissions as I resolve the preliminary objection.

Counsel for the 2<sup>nd</sup> Defendant cited Section 7 of the Civil Procedure Act and the case of Matco Stores ltd & 2 others Vs. grace Muhwezi & anor HCCs No. 90 & 91 of 2001 on the parameters that must be satisfied for the doctrine of res judicata to be applicable to a matter. Counsel submitted that the instant suit is barred by res judicata as the 2<sup>nd</sup> Defendant has ever filed Civil Suit No. 015 of 2010 in the Chief Magistrates Court of Masaka against the Plaintiff over the land comprised in LRV 3804 Folio 22 ranch 16B and judgment was delivered on 05/09/2018.

Counsel further submitted that the instant suit seeks to determine whether the 2<sup>nd</sup> Defendant is a trespasser an issue that was already determined in Civil Suit No. 015 of 2010 and that if this court accepts to re-hear, re-determine and re-decide the same issue in controversy, such conduct would amount to not only a procedural irregularity, but also an illegality is so far as this suit is barred by res judicata. Counsel prayed for this court to find that the suit is barred by res judicata and dismiss it with costs.

In response, Counsel for the Plaintiff submitted that the issues raised in the earlier suit did not include fraud and that the fraud raised by the Plaintiff is as against the allocation of the land and the 1<sup>st</sup> Defendant, not against the 2<sup>nd</sup> Defendant but who would not be condemned unheard in the event that fraud is proved. Counsel further submitted that the Plaintiff was unrepresented in the former suit and did not raise a counter-claim on fraud and was never advised to amend his pleadings and raise a counter-claim.

### Consideration of the preliminary objection;

*Section 7 of the Civil Procedure Act* bars court from trying any suit or issue that has already been adjudicated upon by a court of competent jurisdiction. It provides as follows:-

*“No court shall try any suit or issue in which the matter directly and substantially in 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 has been heard and finally decided by that court. Six explanations are made under that section to clarify on matters that may be mistaken”.*

According to *Black’s Law Dictionary 7<sup>th</sup> Edition*, the term *res judicata* is a Latin word that refers to an issue that has been definitively settled by judicial decision.

In *Kamunye v Pioneer Assurance Ltd [1971] EA 263 at page 265*, Law, Ag. V-P stated the test to be applied in determining whether a suit is barred by *res judicata* in the following words:-

*“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 way 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 adjudged upon. If so, the plea of res judicata applies not only to points upon which the first court was actually required to adjudicate but to every point which properly belonged to the subject of litigation and which the parties, exercising reasonable diligence, might have brought forward at the time”.*(emphasis mine)

The plea of “*res judicata*” acts as an estoppel to prevent the losing party from instituting legal action for the same matter as against the same party, and raising the same issues already adjudicated upon.

For the doctrine of res judicata to apply, it must be shown that;

- a) there was a former suit between the same parties or their privies,
- b) a final decision on the merits was made in that suit,
- c) by a court of competent jurisdiction and,
- d) the fresh suit concerns the same subject matter and parties or their privies (see *Ganatra v. Ganatra [2007] 1 EA 76 and Karia and another v. Attorney-General and others [2005] 1 EA 83 at 93 -94*).

The Supreme Court in *Karia and another v. Attorney-General and others [2005] 1 EA 83*, observed that the proper practice is for the trial Court to try that issue and receive some evidence to establish that the subject matter has been litigated upon between the same parties, or parties through whom they claim.

I have carefully perused the pleadings and judgment in Civil Suit No. 015 of 2010 in which the Plaintiff (2<sup>nd</sup> Defendant herein) sued the Plaintiff herein on a claim of trespass onto the suit land comprised in Lyantode District Ranch 16B. The Defendant (Plaintiff herein) denied the claim and rebutted that he had been in possession of the disputed land at all material times. That he was allotted the disputed land and a lease offer over the same in 2001 and that the entire transaction and distribution was very transparent. He further contended that the certificate of title held by the Plaintiff (2<sup>nd</sup> Defendant herein) was fraudulently obtained.

Civil Suit No. 15 of 2010 was determined and resolved in favor of the Plaintiff (2<sup>nd</sup> Defendant herein) and an eviction order was issued against the Defendant (Plaintiff herein). The trial Magistrate determine the status of the Defendant (Plaintiff herein) on the suit land and observed that both the Plaintiff and Defendant were allocated land for ranch purposes but the Defendant (Plaintiff herein) never entered a formal lease agreement with the statutory owner of the land. The trial Magistrate further observed that there was no

evidence of fraud proved against the Plaintiff (2<sup>nd</sup> Defendant herein) and that his title was conclusive evidence of ownership.

It is the Plaintiff's argument that the instant suit introduces an issue of fraud against the 1<sup>st</sup> Defendant, which was never addressed and determined in Civil Suit No. 15 of 2010 and for that reason the instant suit is not barred by res judicata.

From considering the record of the lower court and the Parties' evidence in the instant suit, I have observed that the former suit was between the same parties save for the 1<sup>st</sup> Defendant who has been introduced in the instant case on allegations of fraud. However, the fraud raised by the Plaintiff arises from the same issues as raised and determined in Civil Suit No. 15 of 2010 which was determined and a final decision on the merits given by the lower court which is a court of competent jurisdiction. It is also my observation that the instant suit concerns the same subject matter and parties or their privies as in the former suit, in as far as it seeks to challenge the ownership of the suit land by the 2<sup>nd</sup> Defendant and how it was acquired.

The issue of fraud which Counsel for the Plaintiff claims was never raised in Civil Suit No. 15 of 2010, was indeed raised in the Plaintiff's (former Defendant) pleadings and was addressed by the trial Magistrate. It is also my clear observation that to determine the issue of fraud raised by the Plaintiff, this court would have to determine how the 2<sup>nd</sup> Defendant acquired the suit land, relying on the lease offer and allocation. I have perused the evidence adduced and established that the allocation of ranches was subject to the terms of the lease. This issue was determined by the lower court in Civil Suit No. 15 of 2010 and to re-determine it would indeed be illegal and against the provisions of Section 7 of the Civil Procedure Act Cap 71.

It is my considered opinion and observation that the Plaintiff in the instant suit is trying to bring before this court, in another way and in the form of a new cause of action, a transaction which has already been put before a court of competent jurisdiction in earlier proceedings and which has been adjudged upon.

I therefore find that the instant suit is indeed barred by res judicata and hold that the issue in contention has already been determined by a court of competent of jurisdiction.

The preliminary objection raised by the Defendants is therefore allowed and the instant suit is dismissed with costs to the 2<sup>nd</sup> Defendant.

I so order.

Dated, signed and delivered by email at Masaka this 05<sup>th</sup> day of August, 2021

Signed; \_\_\_\_\_

**Victoria Nakintu Nkwanga Katamba**

**Judge**