

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MPIGI

CIVIL SUIT NO. 36 OF 2021

NANFUMBA MUSTAFA.....PLAINTIFF/COUNTER-DEFENDANT

VERSUS

1. SEMBATYA JOSEPH }
2. KIKONYOGO RICHARD }DEFENDANTS/COUNTER-CLAIMANTS

BEFORE: HIS LORDSHIP HON. JUSTICE OYUKO ANTHONY OJOK, JUDGE

Ruling

The defendants raised a preliminary objection to the effect that this suit offends the **Lis Pendens Rule**. That the suit is founded on the same facts and seeks the same remedies as HCCS No. 143 of 2006 which was filed in the High Court of Uganda at Nakawa (as it was then), then transferred to the High Court of Uganda at Mpigi and the same is still pending before this very court.

That the principle under the **Lis Pendens rule** is that no court ought to entertain a case pending before the same court or other court having the competent jurisdiction to hear the matter. That the principle is premised on the possible collision course and embarrassment of judicial officers concerned with the matters that could arrive at conflicting decisions on the same facts. Hence, HCCS No. 36 of 2021 is an abuse of court process, frivolous, vexatious and should be dismissed or struck off.

The plaintiff on the other hand stated that Civil Suit No. 143 of 2006 is not pending before this Honourable Court and the same is not similar both in cause of action and prayers.

Issues for determination:

1. Whether the instant suit offends the Lis Pendens Rule?
2. Whether the filing of the instant suit was done in abuse of the court process?
3. What are the remedies available to the parties?

Representation:

Mr. Luwalira Mohammed appeared for the plaintiff while Ms. Rebecca Nakiranda appeared for the 2nd defendant and Mr. Alex Byaruhanga Asimwe appeared for the 1st defendant. Both sides filed written submissions.

5 **Resolution of the issues:**

Issues 1 and 2:

1. Whether the instant suit offends the Lis Pendens Rule?

2. Whether the filing of the instant suit was done in abuse of the court process?

10 Counsel for the defendants submitted that to succeed on the **Lis Pendens Rule**, one is only required to show that there is a pending suit before court of competent jurisdiction between the same parties and on the same matters as in the subsequent suit filed. Counsel quoted the case of **Ssenteza and Another v. Donnie Company Ltd & Another**, HCT – 00 – CY – CI 5 OF 2016, where it was observed that;

15 *“Section 6 of the Civil Procedure Act Cap 71 which houses the principles that underpin the rule, it simply means that no court ought to proceed with the trial or proceedings in which the matter in issue is also directly and substantially in issue in a previous suit or proceeding, and or the previously instituted suit or proceedings is between the same parties, and*
20 *or the suit is pending in the same or any other court having jurisdiction to grant the relief claimed.”*

25 Counsel for the defendants noted that in the instant case the plaintiff under paragraph 4(a) of the plaint claims that on the 23rd December, 1999 he bought kibanja/land measuring 200ft by 200ft from Hajji Shaban Lubega and prayed for orders that he is the owner of land measuring approximately 3 acres comprised
30 in Mawokota Block 92, Plot 242 (754, 755, 756, 757, 758, 759, 760, 761) all out of Plot 242 at Mpami-Bikondo, Mpigi District under paragraph 8(i) of the plaint. In the earlier suit, HCCS No. 143 of 2006, the same plaintiff’s claim was for an order that the plaintiff is a lawful occupant of the part of land comprised in Mawokota Block 92, plot 242 at Mpami-Mpigi.

Further, that the earlier suit from paragraphs 3, 4, 5, 6, 7 and the subsequent paragraphs of the plaint in particular, paragraph 4 of the plaint vide HCCS No.

143 of 2006 laid out the same facts that constitute the plaintiff's cause of action as paragraph 4 of the instant suit. Also, in items (i) (v), (vi), the plaintiff sought orders that he has a lawful interest in Mawokota Block 92, Plot 242 at Mpami, a permanent injunction restraining the defendants and their agents from trespassing on the plaintiff's piece of kibanja and costs respectively in the earlier suit and the same are sought in the instant suit under items (i), (iii) and (vi) of paragraph 8 of the plaint.

Furthermore, counsel for the defendants submitted that the concerns in the instant case are Block 92, Plot 242 (754, 755, 756, 757, 758, 759, 760, 761) all out of Plot 242 at Mpami-Bikondo, Mpigi District which are directly and substantially in issue in HCCS No. 143 of 2006. Counsel noted that HCCS No. 143 of 2006 was transferred to the High Court of Uganda at Mpigi from the High Court of Uganda at Nakawa as evidently supplied by the certified copies of the transfer. Thus, the suit is still pending as they have never received any order of dismissal, determination or withdrawal of the same. And the filing of the instant suit by the plaintiff herein amounted to gross violation of the **Lis Pendens Rule**, a fact which renders the instant suit wholly untenable.

Secondly, Counsel for the defendants pointed out that the parties in HCCS No. 143 of 2006 were Nanfumba Mustafa as the plaintiff and is still the plaintiff in the instant case and Kikonyogo Richard was the defendant although in the instant case Ssembatya Joseph was added as a defendant with whom they are jointly registered as proprietors of the suit land. Thus, the parties are substantially the same and so is the subject matter.

Counsel relied on the case of **Springs International Hotel Ltd v. Hotel Diplomate Ltd & Boney M. Katatumba**, HCCS No. 227 of 2011, where Justice Bashaija K. Andrew interpreted the meaning of same parties as follows;

“I am unable to interpret the phrase “same parties” in the context of the Lis Pendens Rule to mean or be in reference to “all parties”; or where the “same parties” in the earlier suit are not exactly “all parties” in number in the subsequent suit to mean that they are different parties. Placing such an interpretation on the rule would lead to absurdity. Even if the “same parties” (as in numbers) in the earlier suit do not all appear in the subsequent suit, it would not make the “same parties” in the earlier suit that appear in the subsequent suit to be different parties; because they are not”.

The learned Justice further held that;

5 *“The two courts hearing the same matter would set the concerned judicial officers on a “collision course” with the likelihood of arriving at conflicting judgments on the same facts, which would cause embarrassment”. Consequently, this would throw the doctrine of precedent into disarray and create uncertainty and would open fold gates where litigants choose which judge should hear their case”.*

10 Thirdly, that HCCS No. 143 of 2006 was still pending before this very court as the same was transferred from the High Court of Uganda at Nakawa (then) to the High Court of Uganda at Mpigi. Thus, High Court of Uganda, which is this very court, is endowed with immense competent jurisdiction to grant the reliefs sought and indeed it will rise to the occasion and give the appropriate remedies to the parties.

15 Counsel for the defendants went to submit that the instant suit was a clear case of abuse of court process by the plaintiff in the instant case and relied on the case of **Attorney General v. James Mark Kamoga & Another**, SCCA No. 8 of 2004, Mulenga JSC as he was the (RIP) to support his argument and where the definition of “abuse of court process” as proffered by the authors of Black’s Law Dictionary (6th Edition) was quoted as follows;

20 *“Abuse of court process involves the use of the process for an improper purpose or a purpose for which the process was not established”.*

25 Counsel for the defendants in conclusion submitted that this was a case of multiplicity of suits and clearly an abuse of court process and cited the case of **Springs International Hotel v. Hotel Diplomate Ltd & Boney M. Katatumba**, HCCS No. 227 of 2011, where it was held that;

30 *“The filing of a multiplicity of suits is not just an abuse of court process but potentially exposes the concerned judicial officer to the danger of arriving at different and perhaps conflicting decisions in cases pertaining to the same facts. This would have far reaching consequences as it would create uncertainty and inconsistency in court decisions. Uncertainty and inconsistency of court decisions are vices which have the undesirable consequences of, among others, undermining the doctrine of the precedent which is the mainstream of our jurisprudence. For these reasons courts frown at the perpetrators of the vices, and normally invoke*

the heaviest possible sanctions in their arsenal, not just to penalize but also to curtail such vices.”

Counsel prayed that the suit be dismissed as it misconceived and without merit.

5 Counsel for the plaintiff on the other hand submitted that the defendants attached uncertified copies of the alleged plaint together with uncertified copies of an application for an interim order by the plaintiff. That according to **Section 73 (a) (iii)** of the Evidence Act, all court documents are public documents which can only be proved by way of certified copies as secondary evidence under **Section 64 (4)** of the Evidence Act or by way of furnishing original copies under **Section 63** of the same Act. That it is judicial notice that all cases pending before 10 High Court at Nakawa Court were transferred to Mpigi High Court.

Counsel for the plaintiff argued that the defendants have failed to show that the suit is pending in this court and at what stage.

15 It was further submitted for the plaintiffs that the prayers sought in Civil Suit No.143 of 2006 were essentially for an order that the plaintiff/counter-defendant was a lawful occupant on land he was occupying, an order to pay the outstanding balance to the 2nd defendant on occupying a reversionary interest in land, a declaration that the 2nd defendant was fraudulently registered on land, protection from eviction, permanent injunction, general damages, costs of the 20 suit. That the prayers in Civil Suit No. 36 of 2021, are for orders that the plaintiff is the owner of land measuring 3 acres comprised in Mawokota Block 242 (now sub-divided); that the defendants be ordered to cause a sub-division and transfer the disputed land measuring 3 acres into the name of the plaintiff, permanent injunction, punitive damages, general damages and costs of the suit. That the two 25 cases are substantially different and so is the cause of action.

Analysis of court:

I have carefully considered the submissions of sides, the law and the authorities cited. The preliminary objection was premised on **Section 6** of the Civil Procedure Act which provides that;

30 *“No court shall proceed with the trial of any suit or proceeding in which the matter in issue is also directly and substantially in issue in a previously instituted suit or proceeding between the same parties, or between parties under whom they or any of them claim, litigating under the same title, where that suit or proceeding is pending in the same or*

any other court having jurisdiction in Uganda to grant the relief claimed.”

5 It is trite that he who alleges must prove as enunciated in **Sections 101, 102, 103** of the Evidence Act and in this case the defendants had the duty to prove the basis of their contention in their preliminary objection.

10 Counsel for the defendants stated that Civil Suit No. 143 of 2006 was pending before this court however, save for attaching a copy of the said plaint there was no further proof adduced to prove that Civil Suit No. 143 of 2006 was pending before this court. The defendants had the burden to prove that indeed Civil Suit
10 No. 143 of 2006 was pending before this court and this burden does not shift to the plaintiff as counsel for the defendant had submitted that the plaintiff did not prove that there had been a withdraw or matter was dismissed or determined.

15 It was contended for the plaintiff that it is judicial notice that all matters that were initially at the High Court of Uganda at Nakawa were transferred to the High Court of Uganda at Mpigi. It is trite that when matters are transferred from one court to another, they are given a new case Number as per the new court’s numbering schedule, they do not maintain the old case numbers from their former courts. This would have been the same in the instant case.

20 Counsel for the plaintiffs went ahead to cite **Order 17 Rule 6(1)** of the Civil Procedure Rules as amended which I find in applicable in the instant case and the same is disregarded. He added that if at all the suit was still pending from 2006 then it was dismissed for want of prosecution as no record was found of the said case in the registry. And if at all the said suit was before this court then it would have had a different case number and set for hearing before this court. I do
25 concur with the submissions for the plaintiff in this regard.

The defendants did not adduce any further evidence to support their allegation of a pending suit before this court. I also went ahead and took the initiative to find out if indeed there was a pending suit with the same parties and same cause of action before this court and none was found in our records or online system.

30 In regard to the copy of the plaint being uncertified as submitted by the plaintiff, I find that the same were certified on 30th March 2021 and this argument and law as quoted are hereby disregarded with all due respect.

I accordingly find and hold that there is no pending suit before this court of the same nature as the instant case and thus **Section 6** of the Civil Procedure Act has

not been contravened, nor is the instant suit an abuse of court process as there are no multiplicity of suits involving the same parties and same cause of action before this court.

These issues are hereby resolved in the negative.

5 **Issue 3: what are the remedies available to the parties?**

Having found that there is no pending suit in this court and the instant suit does not offend **Section 6** of the Civil Procedure Act, is not an abuse of court process, and there is not multiplicity of suits, I find no justification to grant the defendants' prayers. And the authorities as cited by the defendants are also
10 inapplicable in this case.

I also disregard the plaintiff's prayer for consolidation of suits as the same is not applicable in this case.

The preliminary objection is accordingly overruled. Costs in the cause. I so order.

Right of appeal explained.

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OYUKO ANTHONY OJOK

JUDGE

28/03/2022

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