



- d. The gist of paragraph 14 of HCCS No. 043 of 2023 and paragraph 7 of HCCS No. 044 of 2023 are the same in so far as they allege similar acts of fraud on the Applicants/ Defendants
  - e. The gist of the prayers in HCCS NO. 44 of 2023 are the same and directly in issue under paragraph 16 of the HCCS NO. 43 of 2023 seeking for the grant of similar orders
  - f. For the court to grant the prayers sought in HCCS NO. 44 Of 2023 are the same and directly in issue under paragraph 16 of the HCCS NO.043 of 2023 seeking for the grant of similar orders
  - g. For the court to grant the orders sought in HCCS NO. 044 of 2023, it will have to make findings of facts and law similar to those it would make in HCCS No. 043 of 2023 if both are entertained. These are whether the 1<sup>st</sup> Applicant was validly elected and whether parties are entitled to remedies.
  - h. That the institution of HCCS NO. 44 of 2023 is an abuse of court process and
  - i. That the plaint in HCCS NO.44 of 2023 be rejected.
3. From the court record, looking at the affidavit of service sworn by **Luge Jackson** a High Court process server, the Respondent was served with the Chamber Summons on 15<sup>th</sup> of September, 2023 but he did not respond. Following that background, at the hearing of 10<sup>th</sup>/10/2023, the Applicant prayed that the Application be heard exparte under order 9 rule 20(1) (a) of the Civil Procedure Rules which this court granted.

#### **4. Legal Representation**

Aron Motoka together with Joshua Serugendo from the Attorney General's Chambers represented the Applicant. The Respondent was not represented.

#### **5. Submissions by counsel for the Applicant**

6. Counsel for the Applicant submitted that the Application is premised on three grounds. He stated that the 1<sup>st</sup> ground is seeking to strike out Civil Suit No. 44 of 2023 as the same offends *lis pendens rule*. The 2<sup>nd</sup> ground is that Civil Suit No. 44 of 2023 is an abuse of court process and the 3<sup>rd</sup> is that Civil Suit No. 44 of 2023 was filed by an advocate who did not have instructions.

7. With respect to *lis pendens rule* counsel cited section 6 of the Civil Procedure Act Cap 71 which provides that-



*"No court shall proceed with the trial of any suit or proceedings which the matter in issue is also directly and substantially in issue in another suit or proceedings between the same parties or between persons under whom or any of them claim litigating under the same title where the suit or proceedings is pending in the same court or another court having the same jurisdiction in Uganda to grant the relief claimed".*

8. He argued that section 6 of the CPA encompasses the principle of *lis pendens* rule which simply means that court cannot proceed with the trial of any suit where the matter in issue is substantially in issue in a previous instituted suit in a court of law which has jurisdiction. He referred to **Spring International Hotel Ltd Vs. Hotel Diplomate Ltd and Another Civil Suit No. 227 of 2011** where Justice Bashaija stated *"the tests to be applied when establishing whether a suit qualify under s.6 of the CPA. The first question the court should ask itself is whether the matter in issue in the instant suit are directly and substantially in issue in a previously instituted suit. The second test is whether the previously instituted suit is between the same parties and the 3<sup>rd</sup> test is whether the suits are pending in a court that has jurisdiction to grant the reliefs sought"*
9. Counsel referred court to paragraph 5, 6 and 7 of the affidavit in support and annexure "A" to the copy of the plaint in Civil Suit 43 of 2023 to argue that under those paragraphs, the main cause of action is a declaration that the plaintiff/respondent is the lawful Umukuuka III of the Bamasaba and that the action of the Minister of culture in gazetting the 2<sup>nd</sup> defendant was unlawful. He also referred to annexure "B" to the plaint in Civil Suit No. 44 of 2023. In that suit the plaintiff's claim is a declaration in paragraph 4 of the plaint which is that the plaintiff is the lawful Umukuuka III Inzu Ya masaba and that the acts of the 2<sup>nd</sup> defendant in gazetting the 1<sup>st</sup> defendant was unlawful.
10. Counsel submitted that according to the above background, both suits raise the same issue hence the 1<sup>st</sup> test of *lis pedens rule* is satisfied. The 2<sup>nd</sup> test is whether the previously instituted suit is between the same parties as in the instant case hence the 2<sup>nd</sup> test is also satisfied and the 3<sup>rd</sup> test is whether the suit is pending in the same court having jurisdiction to grant the relief. Counsel submitted that both suits were filed in the High Court of Mbale and this court has jurisdiction to entertain disputes relating to cultural leaders as provided under section 16 of the Institution of Traditional and Cultural Leaders Act, 2011.



11. On the 2<sup>nd</sup> ground counsel submitted that the suit is an abuse of court process. He argued that filing of multiple suits on similar subject matter against the same parties is an abuse of process. He referred to **Male H. Mabilizi Kiwanuka Vs. Attorney General Miscellaneous Application No. 217 of 2021** to submit that the suit filed by the same party against similar offenders in civil suit No.44 of 2023 is an abuse of court process.
12. On the 3<sup>rd</sup> ground counsel submitted that the plaint in Civil Suit No. 44 of 2023 was filed by an advocate who had no instructions. He referred this court to paragraph 5 of the affidavit in support where the deponent narrated how the plaintiff denied giving instructions to counsel Nanbafu Rebecca in the presence of the Registrar of this court and Counsel Nanbafu subsequently filed a withdrawal of the same.
13. In conclusion counsel prayed that this court be pleased to reject the plaint in Civil Suit No. 44 of 2023 since the same is barred under section 5, 6 and 9 of the Civil Procedure Act.

**14. Analysis of Court**

15. The **Black's Law Dictionary (8<sup>th</sup> Edition)** defines the term "*lis pendens*" to mean a "*pending suit or action*"

16. **Section 6 of the Civil Procedure Act** provides that-

*"No court shall proceed with the trial of any suit or proceedings 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 between parties under whom they or any of them claim, litigating under the same title, where that suit or proceedings is pending in the same or any other court having jurisdiction in Uganda to grant the relief claimed."*

17. The Supreme Court of South Africa in the case of **Caesarstone Sdot-Yam Ltd v The World of Marble and Granite 2000 CC and Others (741/12) [2013] ZASCA**, Wallis J stated that-

*"As its name indicates, a plea of lis pendens is based on the proposition that the dispute (lis) between the parties is being litigated elsewhere and therefore it is inappropriate for it to be litigated in the court in which the plea is raised..."*

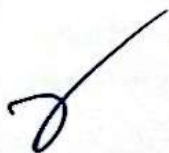


18. In the present application counsel for the Applicant submitted that Civil Suit No. 44 of 2023 be rejected for offending *lis pendens* rule. He argued that Civil Suit No. 43 of 2023 and Civil Suit No. 44 of 2023 raise from the same issue against the same parties and that both are filed in the High Court of Mbale which has jurisdiction to hear the matters.
19. From the above authority, it is evident that for the rule of *lis pendens* to be sustainable, three requirements must be established which are that;
- i. the litigation is between the same parties,
  - ii. the cause of action is the same and
  - iii. the suit is pending in the same or any other court having jurisdiction to grant the reliefs claimed. Also see **Spring International Hotel Ltd Vs. Hotel Diplomate Ltd and Anor(Supra)**
20. The above requirements are going to guide this court in determining whether *lis pendens* rule was violated.
21. Whether the litigation is between the same parties
22. I have looked at annexure "A" to the affidavit in support which is a plaint for **Civil Suit No. 043 of 2023**. That suit is between **John Amran Wagabyalire Vs. Attorney General and John Mike Mudoma**. I have also looked at annexure "B" to the affidavit in support which is a plaint for **Civil Suit No. 044 of 2023** and the suit is between **John Amran Wagabyalire Vs. John Mike Mudoma and Attorney General**
23. It is apparent from the annexures as above cited that the parties in both suits are the same.
24. Whether the cause of action is the same in both suits
25. Under paragraph 4 of the plaint in **Civil Suit No. 043 of 2023**, the Plaintiff/Respondent contended that; *"The plaintiff brings this action for declaratory orders that he was duly elected Umukuuka, a declaratory order that there was a lawful resolution over the dispute about his election, general damages for unlawful gazettelement of the 2<sup>nd</sup> defendant, a declaration that the 2<sup>nd</sup> defendant was not lawfully elected as Umukuuka Wa Bamasaaba, a declaration that the 2<sup>nd</sup> defendant was unlawfully gazetted on 4<sup>th</sup> August, 2023, a declaration that the gazettelement of the 2<sup>nd</sup>*



defendant of 4<sup>th</sup> August, 2023 be expunged, permanent injunction, costs and interests of the suit.”

26. And under paragraph 4 of the plaint in **Civil Suit No. 044 of 2023**, the plaintiff/Respondent stated that; “The claim against the defendants severally is for a declaration that the plaintiff is the lawful Umukuuka III of Inzu Ya Masaaba, a declaration that the 1<sup>st</sup> defendant was fraudulently and unlawfully elected as Umukuuka III and gazetted by the 2<sup>nd</sup> defendant as the Umukuuka III of Inzu Ya Bamasaaba, an order directing the 2<sup>nd</sup> defendant to gazette the plaintiff as the rightfully serving Umukuuka III of Inzu Ya Masaaba, permanent injunction, general damages, punitive damages and costs of the suit...”
27. On a glance of the above claims as contained in the two plaints, one would only come to a conclusion that it is one suit though instituted as two different suits. It is therefore the finding of this court that the cause of action in the two suits is the same.
28. Whether the suit is pending in the same or any other court having jurisdiction to grant the reliefs claimed
29. Following annexures “A” and “B” to the affidavit in support, both suits were filed in the High Court of Mbale which has unlimited jurisdiction to handle matters. Hence, both suits were filed in the court with jurisdiction to grant the reliefs sought.
30. In the view of the above analysis therefore, it is the finding of this court that the matter in issue in Civil Suit No. 0044 of 2023 is also directly and substantially in issue in Civil Suit No. 0043 of 2023 between the same parties, litigating under the same title and pending in the same court hence offending *lis Pendens rule* which renders the subsequent Civil Suit No. 044 of 2023 untenable
- 31. Abuse of Court Process**
- 32.** Counsel for the Applicant submitted that the act of the Respondent of filing multiple suits on similar subject matter against the same parties amounted to an abuse of court process.





33. **Section 17(2) of the Judicature Act Cap 13** provides that-

*“With regard to its own procedure and those of the Magistrate Court, the High Court shall exercise its inherent powers to prevent abuse of the process of the court by curtailing delays, including the power to limit and stay delayed prosecutions as may be necessary for achieving the ends of justice.”*

34. **Section 33 of the same Judicature Act (supra)** provides that;

*“The High Court shall, in the exercise of its jurisdiction vested in it by the Constitution, this Act or any written law, grant absolutely or on such terms and condition as it thinks just, all such remedies as any of the parties to the cause or matter is entitled to in respect of any legal or equitable claim properly brought before it, so that as far as possible all matters in controversy between the parties may be completely and finally determined and **all multiplicities of legal proceedings concerning any of those matters avoided.**”*

35. In the instant case, it is apparent that the Respondent filed Civil Suit No. 043 of 2023 and Civil Suit No. 044 of 2023 with similar cause of action against the same parties and in the same court. This in essence led to multiplicity of suits.

36. Justice Andrew Bashaija in **Spring International Hotel Ltd Vs. Hotel Diplomate Ltd and Anor (Supra)** while citing **Attorney General vs. James Mark Kamoga & Another SCCA No.8 of 2004**, considered multiplicity of suits as one of such instance of potential abuse of court process. I agree.

37. By the Respondent filing both suits in court well aware that they contain similar cause of action and against the same parties, amounted to an abuse of court process since it has the potential of misleading court to pronounce conflicting judgments on the same subject matter.

38. The provisions of the law above cited empower court to curtail such abuse of court process and to avoid multiplicity of suits.

39. It should however be noted that the import of *lis pendens rule* as discussed above is to avoid multiplicity of suits and to ensure that there is an end to litigation to avoid abuse of court process and also to guard against pronouncing conflicting judgments on the same issue. It is therefore no doubt that the act of the Plaintiff/Respondent in filing two

suits on the same cause action and against the same parties, caused multiplicity of suits which is an abuse of court process. See Caesar stone Sdot-Yam Ltd v The World of Marble and Granite 2000 CC and Others (Supra)

**40. Filing of a suit without instructions**

41. Counsel for the Applicant submitted that the plaint in Civil Suit No. 44 of 2023 was filed by an advocate who had no instructions.

42. **Regulation 2(1) of the Advocates (Professional Conduct) Regulations SI 267-2** provides-

“No advocate shall act for any person unless he/she has received instructions from that person or his/her authorized agent.”

43. It is trite that in the absence of a complaint from the plaintiff, the general rule is that a litigant is entitled to have any counsel or instruct any counsel of his or her choice. See Ayebazibwe Raymond Vs Barclays Bank Ltd and 3 Others High Court Civil Suit No.165 of 2012

44. In the instant Application, the Plaintiff/Respondent did not participate. Therefore, the claim by the Applicant that the Respondent's counsel did not have instructions to institute Civil Suit No. 044 of 2023 is baseless. The only party who ought to prove such a claim is the Respondent who did not give such evidence.

45. Accordingly, this application succeeds in the following terms-

1. The Plaint in HCT Civil Suit No. 0044 of 2023 is hereby rejected for being an abuse of court process.
2. Costs in HCCS NO.0044 of 2023 are awarded to the Applicant.

I so order.

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**LUBEGA FAROUQ**  
**JUDGE**

31<sup>st</sup> October 2023