

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(LAND DIVISION)
CIVIL SUIT NO. 239 OF 2005
CIVIL SUIT NO. 298 OF 2007**

EVARISTO MUGABI..... APPLICANT

VERSUS

**1. CHARLES EKEMU
2. JULIUS OKOBOI
3. WYCLIFFE BIRUNGI.....RESPONDENTS**

RULING

BRFORE HON. LADY JUSTICE EVA K. LUSWATA

On 23/9/15, I delivered my ruling by which this suit was dismissed for being *res judicata*. The plaintiff (who as a practicing advocate represented himself) expressed his wish to appeal and prayed for the following orders:-

1. That the 3rd defendant be ordered to pay to him Shs. 6,000,000 as money outstanding on account to him from that defendant with all interest that had accrued.
2. That he be granted leave to appeal the ruling on *res judicata*.

Not much was submitted by Mr. Mugabi to support the first prayer save to state that it was a finding of the Court of Appeal that he was owed that sum. In reply, counsel Kabayo submitted that the plaintiff could not in the same action seek for compensation from the 3rd defendant, and at the same time seek leave to appeal my ruling. He argued that if the money were paid, then there would be nothing more to adjudicate upon and the appeal would be rendered irrelevant.

My ruling of 23/9/15 was restricted to the preliminary objection that the suit was *res judicata*, and therefore, the mandate of this court can only be stretched to making a finding on that objection only, which it did. I am aware and did mention in my ruling that the Justices of the Court of Appeal in CA. 99/11 did in their judgment (at page 15) observe that there was some money outstanding from the 3rd defendant to the plaintiff. However, that finding appeared to be in the body but not the final judgment of the court. In any event, this court cannot execute the decision of another court, especially that which is superior in hierarchy. Should the plaintiff

wish to execute that part of the judgment of the Court of Appeal, then he can do so following the correct procedure.

In the event that he chooses that first option, then I would agree with counsel for the 3rd defendant that he can then not under the same proceedings maintain his prayer for leave to appeal my decision. The two prayers cannot co-exist because in the event he receives payment, it will be taken that he did agree with my decision that his alleged claim was finally resolved by the Court of Appeal. In that event, the appeal would be rendered irrelevant.

I thereby decline to grant the first prayer.

With particular reference to the second prayer, I agree with counsel Mugabi that he would require leave of this court before preferring an appeal against my ruling. In this, he must show the following:-

1. That there are *prima facie* or arguable grounds of appeal which merit serious consideration.
2. That the intended appeal has reasonable chances of success and,
3. That he has not been guilty of dilatory conduct.

See for example: **Sango Bay Estates Limited Vs. Dresdner Bank AG (1992) EA 17, and Degeya Trading Stores (U) Ltd Vrs URA C.A.C.A. 16/96.**

The reasons advanced by the plaintiff are firstly that the subject matter of his claim is land. And that issues surrounding his claim to that land are so important that they would thereby require interpretation by a superior court which will in addition enhance jurisprudence in that area of law. Secondly, he argued that the fundamental issue of fraud committed by the defendants and other actions connected to it were never addressed by any of the courts which have heard this matter. In his view, the Court of Appeal made a finding that the non-payment of Shs.6million by the 3rd defendant, was a fraudulent breach of contract that tainted all three defendants. Relying on the case of **Fredrick Zaabwe Vs The Orient Bank Ltd & Ors SCCA.4/06** he concluded that whenever fraud is brought to the attention of court, it should be addressed.

In response, counsel Kaboyo argued that the plaintiff had not shown any question of importance for the Court of Appeal as a higher court to consider. In his view, this court had substantially dealt with all issues in controversy between the parties, and that the plaintiff had not shown any grounds of appeal that would merit serious judicial consideration. He prayed for the application to be dismissed.

Indeed, I agree with counsel for the 3rd defendant. Merely stating that a decision of a land matter would by itself merit an appeal or one that would enhance jurisprudence are not sufficient grounds to merit leave to appeal a decision on *res judicata*. Such an interpretation would mean that all decisions of this court, as a land court, would be appealable as of right, which was never the intention of the legislature.

In my ruling, I found and I still hold, that all pertinent issues between the parties or those issues that should have been put before the High Court in CS. 141/09 and CA 99/11 were fully traversed and adjudicated upon by the Court of Appeal. It is evident from the record that the issue of fraud was raised as ground 3, 4 & 7 in the Memorandum of Appeal in CA. 99/11. The Court of Appeal did find that the plaintiff was in *pari delicto* with the Registrar of Titles in allowing the transfer of the suit land to third parties. Such a ruling would naturally exonerate the defendants whom the Court of Appeal considered to be the third parties within the context of CS.141/09 and the appeal. I also previously did find that in the proceedings of CS. 141/09, the plaintiff appeared to have exonerated the defendants against all wrong doing.

In my view therefore, no *prima facie* grounds of appeal were raised to merit serious consideration by the Court of Appeal. So although the appellant cannot be accused of dilatory conduct, his intended appeal would only be a waste of court's time. On those grounds, I would decline the second prayer as well.

In summary, the application for leave to appeal is denied. It was my decision in the ruling that each party bears their costs. I would maintain the same order not to grant costs to the defendants on account of this ruling.

I would therefore hold that the prayer for leave to appeal my decision to dismiss this suit is denied, but with an order that each party bears their costs.

I so order

EVA K. LUSWATA
JUDGE
16/10/2015