

THE REPUBLIC OF GANDA

LAND DIVISION

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MISCELLANEOUS APPLICATION NO. 172 OF 2021

(Arising out of Miscellaneous Application No. 863 of 2020)

(Arising out of Civil Suits No. 1140 of 2019; NO. 1101 OF 2019 AND NO. 474 OF 2017)

SARAH KYOKUSINGURAAPPLICANT

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VERSUS

BETT NANKANJA.....RESPONDENT

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Before: Lady Justice Alexandra Nkonge Rugadya

RULING:

20 **MA No. 863 of 2020** was filed by Ms Nankanja Betty against 18 respondents including Kyokusingura Sarah, the applicant herein, seeking consolidation of three suits: **Civil Suits No. 1140 of 2019; NO. 1101 OF 2019 AND NO. 174 OF 2017**; a prayer which this court had granted since initially no objection was found on court record.

25 It was however later established that on 15th October, 2020, the applicant who was the 4th respondent in that application had filed a reply objecting to the consolidation of the suits. The reply by the applicant had not been brought to the attention of this court at the time it delivered its decision on 19th January 2021.

Counsel for the 4th respondent/applicant in his letter dated 29th January, 2021 wrote to this court drawing its attention to the anomaly, which according to him had occasioned an injustice to his client.



The 4th respondent thereupon filed the present application **MA No. 0172 of 2021** challenging the decision of court on the ground that the reply in objection to the application for consolidation had not been taken into consideration by this court and thus the applicant's right to be heard had been violated.

5 The applicant therefore seeks to have the order for consolidation set aside on the ground that there was an error and omission on court record.

The affidavit in reply to the present application was deponed by Mr. Bonny Kyasanku, the lawful attorney of the respondent, Ketty Nankanja.

10 He deponed that the application did not disclose any ground for review; the ruling did not occasion an injustice and the application was therefore brought as an afterthought.

That the matter was not *res judicata* as the applicant wished court to believe and according to him the decision by this court to consolidate the suits had been justified.

The applicant was represented by **M/S Mutabingwa & Co. Advocates**.

15 In the submissions in reply filed by **M/S Songom & Co. Advocates** his point was that an error in judgment or perceived misdirection on a matter of law by the court cannot be said to constitute an error on the face of the record. He cited the Kenyan case of **Zabulon Makua vs Choti and others in MA No. 57 of 2016**, though he did not avail any copy to this court.

Consideration of the issue:

20 I have had occasion to look at the detailed arguments raised by both side and I am inclined to disagree with the assertion made that an inadvertent omission by court to take into consideration a response made by a party can be perceived as misdirection on a point of law, or as an error in judgment by court.

This court also came to learn later that the applicant had filed another application: **MA No. 1468 of 2020** challenging **Civil Suit No. 1101 of 2019** on the ground that it was *res judicata*.

25 Suffice to note that the right to be heard is sacrosanct and guaranteed under the Constitution. It accrues to any party who is properly before court and who has admitted to its jurisdiction. (**Nakiranda Robinah vs Sirive Musoke Mbidde and 4 others HCMA No.548/2013**).

30 It goes without saying therefore that any person who is denied of a right to be heard is an aggrieved person for the purposes of **section 82 of the Civil Procedure Act and Order 46 of the Civil Procedure Rules**, which entitle such person to a review.



Order 11(1) of the Civil Procedure Rules provides: that where two or more suits are pending in the same court in which the same or similar questions of law or fact are involved the court may, either upon the application of one of the parties or of its own motion upon such terms as it may seem fit:

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- a. order a consolidation of those suits;
 - b. direct that further proceedings in any of the suits be stayed until further order.

Generally, a court would be disinclined to make any such order where matters in any of the affected suits sought for amalgamation have already been dealt with and concluded in an earlier suit, by a court of competent jurisdiction. It

- 10 Under **section 7 of the Civil Procedure Act, Cap. 71** the court would decline entertaining any issue which may have arisen in a former suit between the same parties or between parties under whom they or any of them claim in a court competent to try the subsequent suit or the suit which the issue has been subsequently raised, heard and subsequently determined by that court.

- 15 The applicant's claim which was the basis of her objection against consolidation vide: **MA No. 8630 of 2020** seems to suggest that **Civil Suit No. 1140 of 2019** is *res judicata*, on account of this court's earlier decision: **vide Civil Suit No. 101 of 2012: Kate Nankanja vs Semakula Kizza.**

The record reveals that out of the several suits that the respondent seeks to have for consolidation, only **Civil Suit No. 474 of 2017** is currently before this court.

- 20 The rest are pending before other judicial officers, and this partly explains the mix up which resulted in the failure to locate the 4th respondent's reply to the application in **MA No. 8630 of 2020**.

- 25 Under **Civil Suit No. 1140 of 2019**, there is an application which is pending before Justice Cornelia Sabiiti, already fixed for hearing in June, 2020. The said application, **MA No. 1468 of 2020** seeks to challenge **Civil Suit No. 1140 of 2019** on the ground that it is *res judicata*.

It is that court which, upon hearing that application, is to decide on whether or not in light of the earlier judgment made by this court **vide Civil Suit No. 101 of 2012: Kate Nankanja vs Semakula Kizza** the matters pending before her are *res judicata*.

- 30 It is only then that court would be in position to determine whether the main suit **Civil Suit No. 474 of 2017** pending before me can be consolidated with any of those pending before her, or any other judge for that matter.

The application is accordingly granted, taking into account all the above factors.



Costs await the outcome of the main suit.


Alexandra Nkonge Rugadya
Judge.

5 **25th March, 2021**

Delivered by email on 26th March, 2021