

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**(LAND DIVISION)**  
**MISCELLANEOUS APPLICATION NO. 1659 OF 2020**  
**(ARISING FROM HCCS NO 234 OF 2020)**

**1.WILLIAM KIBIRIGE**

**2.NDAWULA JONATHAN-----**

**APPLICANTS**

**VS**

**THE REGISTERED TRUSTEES OF**

**NAKALAGO MUTUBA TRUST-----**

**RESPONDENTS**

**Before: Hon. Lady Justice Olive Kazaarwe Mukwaya**

**RULING**

The Applicants brought this motion or orders that Civil Suit No. 234 of 2020 be struck out with costs on grounds that the suit is res judicata to Miscellaneous Cause 105 of 2019.

Miscellaneous Cause No. 105 of 2019 was filed by the Applicants against the Commissioner Land Registration.

It was the Respondents' contention that this suit was not barred by res judicata. Counsel for the parties made extensive submissions which I have considered.

### **Issue**

### **Whether Civil Suit 234 of 2020 is res judicata to MC 105 OF 2019?**

### 5 **RESOLUTION**

Section 7 of the Civil Procedure Act provides as follows;

#### *7. Res judicata*

*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*  
 10 *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.*

What is clear from the onset is that the Registered Trustees of Nakalago Mutuba, the Plaintiffs in Civil Suit 234 of 2020 were not parties in Miscellaneous Cause No. 105 of  
 15 2019. The matter was solely between the Applicants, Mr. William Kibirige and Mr. Ndawula Jonathan against the Commissioner Land Registration. Court in that matter ordered that;

**‘The Respondent proceeds with the process of registration of the subdivision and transfer of the Applicants’ land in Busiro Block 403 formerly Plots 53, 55 and now**  
 20 **Plots 264 and 265 at Buzzi and to process the duplicate certificate of title into the Applicants’ name.’**

Counsel for the Applicants maintains that this order settled the question of the Applicants’ ownership of the suit land in Civil Suit 234 of 2020. And that therefore that question was res judicata.

A perusal of the Plaint in Civil Suit 234 of 2020 indicates that the Plaintiffs sued 5 Defendants. The Applicants herein are the 1st and 2nd Defendants.

Paragraph 5 of the Plaint filed on the 7th July 2020 in Civil Suit 234 of 2020 reads as follows;

5     *'The Plaintiffs' claim against the Defendants jointly and severally is for;*

- a) *A declaration that the suit land comprised in Busiro Block 403 Plot 264 measuring 16.10 Hectares and 265 measuring 40.47 Hectares belongs to the Nakalago Mutuba of Ggayi ssiga of Ngeye clan and that it does not belong to the estate of the late Eria Kirumira.*
- 10     b) *A declaration that the registration of the 1st and 2nd Defendants on the suit land was through fraud.*
- c) *–*
- d) *–*
- e) *An order directing the Commissioner land registration to cancel the certificate*  
15     *of title issued to the 1st and 2nd Defendants.*
- f) *An order directing the Commissioner land registration to cancel the 2nd Defendant on the duplicate certificate of title of the suit land.*
- g) *An order directing the Commissioner land registration to cancel the illegally created plot 264 and 265 and issue an order for reinstatement of the old plots 53*  
20     *& 55 measuring 98.767 Hectares.*
- h) *An order directing the Commissioner land registration to reinstate the suit land to the late leseni Nakalago (alias Nakalango).*
- i) *An order of permanent injunction restraining the Defendants from dealing in any way, negotiating with the Plaintiffs' sitting tenants, selling, sub-dividing,*  
25     *alienating, disposing off the suit land belonging to the Nakalago Mutuba property.*

j) –

In my view the primary claim by the Plaintiffs is for;

a) *A declaration that the suit land comprised in Busiro Block 403 Plot 264 measuring 16.10 Hectares and 265 measuring 40.47 Hectares belongs to the Nakalago Mutuba of Ggayi ssiga of Ngeye clan and that it does not belong to the estate of the late Eria Kirumira.*

It was incumbent upon the Applicants to demonstrate that this question/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.

The proceedings in MC 105 of 2019 did not resolve this question. They were different proceedings. Their effect was to grant the Applicants authorization to deal in the suit land and obtain a duplicate certificate of title. Civil Suit 234 of 2020 does not seek to question the legality of the actions of the court in MC 105 of 2019 but is questioning the legitimacy of the Applicants actions therein, in light of the Plaintiffs' claim to the suit land.

It is my opinion that the Plaintiffs' suit is not res judicata. Perhaps, the relationship between MC 105 of 2019 and Civil Suit No. 234 of 2020, is that it is only upon the successful prosecution of the Civil Suit No. 234 of 2020 that the Plaintiffs/ Respondents can challenge the orders of the court in MC. 105 of 2019.

**In conclusion, I dismiss this application. Costs shall be in the cause.**

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**Olive Kazaarwe Mukwaya**

**JUDGE**

**31st March 2021**

Delivered by email to Counsel for the parties.