

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(LAND DIVISION)

MISCELLANEOUS APPLICATION NO.583 OF 2022

(Arising out of Civil Suit No.521 of 2021, Civil Suit No.386 of 2021 & Civil Suit No.516 of 2021)

1. NABYONGA HARRIET
2. KATENDE ABDALLAZIZ:.....APPLICANTS

VERSUS

1. KAMOGA MOHAMMAD
2. BIBAGAMBA PETER
3. NABBANJA SHAMIM
BIRUNGI:.....RESPONDENTS

Before: Lady Justice Alexandra Nkonge Rugadya.

RULING.

Introduction:

This application is brought under **Section 98 of the Civil Procedure Act Cap.71 and Order 11 rules 1 & 2 of the Civil Procedure Rules S I 71-1**, seeking order for consolidation of three suits to wit; **High Court Civil Suit No.521 of 2021, High Court Civil Suit No.386 of 2021 & High Court Civil Suit No.516 of 2021** to be tried jointly and an order that costs of the application be provided for.

The background of this application as per the applicants' respective affidavits in support of the application, is that the 1st respondent was a donee of powers of attorney from the 2nd respondent with specific instructions to negotiate with, and settle all lawful squatters on land comprised in **Busiro Block 435 plots 8, 10, 19 & 96 at Kikaya** and was also in occupation of the *kibanja* on **plot 96** which was developed with a house and gardens.

The 2nd respondent on his part stated that at the time the 1st respondent was granted the power of attorney, he was not only in possession, but also in full occupation of the *kibanja* at **plot 96** having purchased the same and was only waiting for issuance of his certificate of title but the 1st respondent instead chased away all the squatters and transferred the land into his names.



That instead of settling all the squatters, the 1st respondent chased all of them from the land including the 1st applicant and that his actions led to the revocation of the grant of powers of attorney by the 2nd respondent which prompted the 1st respondent to institute **Civil Suit No.516 of 2021** against the 2nd & 3rd respondents challenging the said revocation.

- 5 That in his written statement of defence, the 2nd respondent raised a counterclaim for among others, declaratory orders that the 1st respondent's actions pursuant to the grant of powers of attorney were null and void.

10 That after the demolition of her house and gardens by the 1st respondent, the 1st applicant filed **Civil Suit No. 521 of 2021** against him for declaratory orders as well as a permanent injunction while the 2nd applicant who was also a squatter on the land and had purchased a legal interest from the 2nd respondent filed **Civil Suit No.386 of 2021** against all 3 respondents seeking declaratory orders and a permanent injunction.

15 That based on the advice of her lawyers, it is the applicant's belief that all the suits arise from the same/similar series of transactions to wit; the grant of powers of attorney to the 1st respondent by the 2nd respondent, which resulted in the forceful eviction of the applicant as well as the other squatters hence the 3 suits in which the 2nd respondent is a key witness who needs to explain to the extent of the powers of attorney to court and that it is also important to determine who the rightful owner/landlord of the land is since there are two competing landlords following the grant of the powers of attorney.

- 20 In addition, that the consolidation of all the above suits is necessary to avoid multiple proceedings in court over the same issues and that it is in the interest of justice that they be consolidated.

Representation:

25 The applicants were represented by **M/s Kavuma Kabenge & Co. Advocates** while the 3rd respondent was represented by **M/s Ssekandi & Co. Advocates**.

Neither the 1st nor the 2nd respondents or their respective legal representatives filed any reply to oppose this application despite the fact that they were all served through their respective lawyers, as per the affidavit of service on record.

30 The 3rd respondent on her part filed a reply in opposition to this application. There is no evidence however that she served it to the applicant. The applicants did not file any rejoinder to her reply since they had not been served. This application is accordingly uncontested.

Consideration of the application by court.

The main issue for consideration is whether or not the applicants have established sufficient grounds for consolidation of the suits.

Consolidation of suits is generally governed by the **Civil Procedure Rules S.I 71-1** under **Order 11 rule (1) of the CPR**, which stipulates that:

5 ***“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, at its discretion, and upon such terms as may seem fit-***

a) order a consolidation of those suits; and

b) direct that further proceedings in any of the suits be stayed until further order.”

10 It is well established that where two or three suits are filed involving the same parties and arising from the same cause of action, they should either be consolidated for purpose of determining liability or only one of them, first in point of time heard first. **(See: Teopista Kyebitama v Damiyano Batuma (1976) HCB 276, Luyimbazi Saul vs Mukasa Benon & others MA No.351 of 2021)**

15 Ordinarily, consolidation of suits should be ordered where there are common questions of law or fact, consolidation of suits should not be ordered where there are deep differences between the claims and defence in each action. **(See: Stumberg and another v Potgieter (1970) EA 323)**

Civil Suits No.516 and 521 of 2021

20 **Civil Suits No.516 and 521 of 2021** according to the **Electronic Court Case Management Information System (ECCMIS)**, both suits were initially filed in this court on 28th May, 2021 and allocated to this court.

25 In **High Court Civil Suit No.516 of 2021**, the 1st respondent sued the 2nd respondent seeking among others a declaration that he (1st respondent) is entitled to 35% of the land recovered by him in respect of land comprised in **Busiro Block 435 Plot 8, 10, 19 and 96 land at Bukoyo**; a declaration that part of the land recovered that was retained by the plaintiff/1st respondent herein forms part of the 35% that he is entitled to according to the memorandum of understanding executed between the 1st & 2nd respondent and that the certificates of title advanced by the 1st respondent to the 2nd respondent make up 65% of the
30 land that the 2nd respondent is entitled to; a further declaration that the defendant/2nd respondent has no interest whatsoever in the land that constitutes the 35% retained by the 1st respondent.

35 In **High Court Civil Suit No.521 of 2021**, the 1st applicant sued the 1st respondent for trespass, detinue and conversion. She sought a permanent injunction restraining the defendant (1st respondent), his agents and those deriving authority from him, any further

trespass and interfering with the lawful occupancy of the kibanja situated **Busiro Block 435 Plot 96 land at Bukoyo** measuring approximately **5 acres**.

High Court Civil Suit No.386 of 2021

5 **High Court Civil Suit No.386 of 2021** on the other hand was initially filed in this court on 26th April, 2021, seeking among others a declaration that the plaintiff therein, the 2nd applicant herein was the lawful owner of the suit land comprised in **Busiro Block 435 Plots 462 & 463 land at Bukaya**; a declaration that the 2nd & 3rd defendants therein, (the 1st & 3rd respondents herein) fraudulently got registered as proprietors of the suit land and an order for cancellation of their registration as proprietors of the suit land.

10 It is quite evident from the complaints in the above suits that the suit property comprising the subject matter in all three suits is the same that is to say; the suit property claimed by the applicants to wit a kibanja situate in **plot 96** and that **plots 462 & 463** claimed by the 2nd applicant emanated from the subdivision of **plot 96**.

15 It is also noteworthy that one of the plots of land claimed by the 1st respondent as part of the land forming part of the 35% of the land he is entitled to is **plot 96**. All the three suits relate to one transaction to wit; the grant of and validity of the exercise of powers of attorney to the 1st respondent by the 2nd respondent which resulted in the eviction, transfer and institution of the above suits.

20 This court's determination of the legality of the said transaction in **Civil Suit No.516 of 2021** would have a direct bearing on the prosecution and outcome of **Civil Suit No.386 & 521 of 2021** as the same would determine the reliefs that the applicants and respondents are entitled to.

25 Courts of law are enjoined to settle all manner of disputes to effective conclusion. The fundamental consideration is to enable the court to effectually and completely deal with all matters brought before it and to avoid multiplicity of proceedings. **See: Kololo Curring Co. Ltd. vs. West Mengo Co-op Union Ltd. [1981] HCB 60.**

30 I therefore allow this application and order that from the date of this, my order, **HCCS NO. 386 of 2021, HCCS 516 of 2021** and **HCCS NO.521 of 2021** are consolidated and shall be heard by this same court, to be effected with the guidance of this court during a scheduling conference that is to be fixed before the Registrar of this court.

Each party shall meet their own costs.

I so order.



Chhaya

.....
Alexandra Nkonge Rugadya

Judge

5 14th July, 2022.

Delivered by email

Chhaya C

13/7/2022.