

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
[LAND DIVISION]
MISC. APPLICATION NO. 0663 OF 2023
[ARISING FROM CIVIL SUIT NO. 051 OF 2021]

THE REGISTERED TRUSTEES
OF KAMPALA ARCHDIOCESE

APPLICANT / 1ST DEFENDANT

V

1. GERALD SEKAABE NYANZI

2. THE COMMISSIONER LAND REGISTRATION

RESPONDENTS

BEFORE: HON. LADY JUSTICE P. BASAZA - WASSWA

R U L I N G

Representation:

Mr. Matsiko Joseph and Ms. Akampurira Patience for the Applicant / 1st Defendant.

Mr. Muwema Fred and Mr Tomusange Anthony for the 1st Respondent / Plaintiff

None for the 2nd Respondent / 2nd Defendant.

Introduction:

[1] This Ruling is in respect of an application filed by the Applicant: **The Registered Trustees of Kampala Archdiocese (the RTKA)**. In its application, the RTKA seeks the leave of Court to appeal its Ruling and Orders¹ (**'the Ruling'**) made on the three (3) Preliminary Objections raised in the Head suit: **HCCS No. 051 of 2021**.

Maschhanna 10/8

¹ The Ruling and Orders dated March 13, 2023

[2] The application was brought under **sec. 98 of the Civil Procedure Act² and Order 44 Rules 2, 3, and 4 of the Civil Procedure Rules³.**

[3] In the Ruling appealed against, all the said three (3) preliminary objections were overruled. These objections were:

- i) That the Plaintiff's suit is barred by the doctrine of limitation.
- ii) That the Plaintiff's suit does not disclose a cause of action against the RTKA.
- iii) That the Plaintiff's suit is frivolous and vexatious.

Grounds of this present application:

[4] The RTKA contends in her motion and supporting affidavit;

- i) That her intended appeal has a high likelihood of success and has arguable grounds of appeal with substantial questions of law that merit serious judicial consideration on appeal.
- ii) That the grounds of her intended appeal are that:
 - a) the learned Trial Judge erred in fact and in law when she found that the Plaintiff's suit is not barred by the statute of limitation.
 - b) the learned Trial Judge erred in law when she held that the Plaintiff's plaint discloses all the three elements of a cause of action against the RTKA.
 - c) the learned Trial Judge erred in law when she held that the plaint is neither frivolous nor vexatious.

Masabhuwamy 10/8

² Cap 71

³ S.1 71-1

- iii) That Mr. Sekaabe had already executed a binding Memorandum of Agreement in which he relinquished his claim to the land that he now claims in the head suit. And it is important that the validity of the said agreement and its effect on his purported claim be determined as a matter of law and in terms of limitation, on appeal.
- iv) That the Head suit relates to Mr. Sekaabe's attempts to take over land which the catholic church has several developments on the suit property including houses, schools, a convent, farms and plantations.
- v) That the RTKA has brought her application without inordinate delay.
- vi) That the RTKA will be greatly prejudiced if it is denied from prosecuting its intended appeal against the Ruling.

Grounds in opposition:

[5] In his affidavit in reply, **Mr. Sekaabe Nyanzi** replied:

- i) That the issues raised for trial stated in the Joint scheduling memorandum, are the same issues that were the subject of the preliminary objections that were dismissed by the court in the Ruling.
- ii) That the RTKA cannot seek leave of court to appeal the dismissal of the preliminary objections and take them for consideration on appeal while subjecting them to trial before this Court.
- iii) That the matters raised in the preliminary objections and intended appeal cannot be determined without calling and evaluating evidence at the trial.

Masumbi Nyanzi 10/8

- iv) That the intended appeal is an abuse of court process, meant to delay the hearing of the Head suit and it is in the interests of justice that this application ought to be dismissed.

Issue for determination:

- [6] **Whether sufficient cause has been shown to warrant the grant of leave to appeal?**

Submissions by Counsel

- [7] Learned Counsel for each party filed their respective written submissions, albeit outside the agreed timelines. Nonetheless, I have duly considered all their arguments. For brevity, I will not reproduce their arguments here. I will only refer to them where and when necessary.

Analysis by Court:

- [8] It is a well-established principle that '**leave to appeal from an order in civil proceedings will normally be granted where *prima facie*, it appears that there are grounds of appeal which merit serious judicial consideration**'. Per SPRY, J., in Sango Bay Estates Ltd and Ors v. Dresdner Bank⁴. Also see the decision in Samwiri Massa v. Rose Achan⁵.
- [9] Guided by the above authorities, the task for this court is to assess: '**if, *prima facie*, there are grounds of appeal that merit serious judicial consideration by the Court of Appeal?**'

 10/8

⁴ [1971] E.A 17

⁵ [1978] HCB at page 297

[10] Learned Counsel for the RTKA pointed out that their Client's grounds of appeal are shown in paragraphs 7 and 9 of the motion and of the affidavit in support, respectively. (See the said grounds (a) – (c) captured in paragraph [4] (ii) of this Ruling.

[11] Counsel argue that their Client's intended appeal raises '**three (3) substantial questions**' to be considered by the Court of Appeal.

According to Counsel:

i) The 1st question is on the preliminary objection on limitation in respect of the Memorandum of Understanding (the MoU). They argue that the MoU was executed more than six years before the suit was filed, and that the learned trial Judge gave Mr. Sekaabe the benefit of her doubt, based on what was not supported by the pleadings.

They further argue that the reliefs sought by Mr. Sekaabe are not equitable, but legal reliefs. That the main relief he seeks is for the recovery of land.

ii) The 2nd question is on the preliminary objection on limitation under section 5 of the Limitation Act. Counsel argue that the learned trial Judge based the Ruling on her opinion that at 25 years of age, Mr. Sekaabe had no ability to suspect fraud or illegality. That such an opinion was not based on the pleadings by Mr. Sekaabe, but on conjecture and speculation.

iii) The 3rd question is on the preliminary objection that the plaint does not disclose a cause of action. Counsel argue that the plaint does not show

anywhere how the RTKA fraudulently procured its registration on the certificate of title to the suit property, save inferences of fraud in respect of the MoU.

- [12] In rebuttal, learned Counsel for Mr. Sekaabe argue that the intended appeal has not established the existence of arguable points. That the questions raised are not significant questions. They further argue that interlocutory appeals should not be tolerated.
- [13] I will make my assessment of the grounds of appeal in the same order in which the above questions were presented by learned Counsel for the RTKA. Save that, for convenience and expediency, I will assess questions Nos. 1 and 2 jointly. Both questions are in respect of the overruled preliminary objection on: *'whether the Head suit is barred by the Statute of limitation'*.
- [14] However, before I make my assessment, it is important to clarify that: **'it is not place for this court to determine the merits of the said three questions'. Rather, 'it is place for this Court to assess whether the said three questions pass the litmus test for substantiality'?** To wit: Adopting the wording of SPRY J in the Sango Bay case (supra): 'Whether the said questions merit serious judicial consideration by the Appellate Court?
- [15] My Decision on the 1st preliminary objection on limitation, was in two (2) parts: The 1st part was hinged on section 5 of the Limitation Act, while the other part was hinged on section 3 of the Limitation Act.

Masamba Mwangi 10/3

⁶ The Limitation Act, Cap. 80 of the Laws of Uganda.

[16] For the 1st part, my opinion and calculations were based on the Plaintiff's pleadings under paragraphs 8 (a) and (g) of the plaint. Under which paragraphs, the Plaintiff claims that he was 4 years old in 1976, and that he discovered the alleged fraud and illegality in 2010.

In view of which paragraphs, the argument by learned Counsel for the RTKA that my opinion and calculations were based on conjecture and not on the Plaintiff's pleadings, is therefore incorrect. In my view, the question posed is not one that would call for the determination by an appellate Court.

[17] For the 2nd part, in my Decision, I applied section 3 (6) of the Limitation Act that provides for exemptions from the six (6) year limitation period, in cases where equitable reliefs are sought.

[18] The argument by learned Counsel for the RTKA that the reliefs sought by Mr. Sekaabe are legal and not equitable reliefs, is not only an incorrect argument, but it is something that can simply be seen from the list of reliefs sought in the plaint. It is not a question that would require consideration, let alone 'serious' consideration, by an Appellate Court.

[19] In my view, the reliefs sought by Mr. Sekaabe, as listed in his plaint, are a mix of both legal and equitable reliefs. Both types of relief were addressed in my Decision on the 1st preliminary Objection under the two parts stated above.

[20] As already, clearly pointed out in paragraph [46] of the Ruling, **this Court is yet to investigate and determine the legal implications of the said MoU in relation to the claims of Mr. Sekaabe. To wit: the content, context and effect of the said MoU are the subject of trial by this court.** It is not until this court has heard and

pronounced itself, *inter alia*; on the MoU, and on the alleged fraud and alleged illegality, that any questions related to, and or arising therefrom, can become the subject of an appeal.

[21] In sum, it is my assessment that both questions Nos. 1 and 2 are not substantial questions. They do not merit serious judicial consideration by the Court of Appeal.

[22] I will now turn to assess the 3rd question on the preliminary objection on disclosure of a cause of action in the plaint.

[23] My assessment of this question, is also that it is not a substantial question. The Plaintiff did plead the elements of alleged fraud and illegality under paragraph 8 of his plaint. He pleads them particularly under paragraph 8 (o) thereof.

[24] Having found that all three (3) questions are not substantial questions, I hasten to echo the now settled position that: **'it is not necessary to file separate appeals on interlocutory orders made in the course of the Hearing, and then another appeal against the final decision'**.

For this position, see the Decision of Karokora, JSC., in Sanyu Lwanga Musoke v Sam Galiwango⁷, applied by Musota, J., (as he then was) in Yedida Padde v Hamidali Ali⁸.

[25] In that Sanyu Lwanga case (supra), citing a wealth of authorities⁹, Karokora, JSC., stated that: I quote:

Musota J. 10/8

⁷ SCCA No. 48 of 1995 [1997] V KALR at pg. 47

⁸ HC Civ. Appeal 0045 of 2008 (HC Circuit Mbale)

⁹ Hannington Wasswa & Ors v Maria Ochola & 3 Ors SCCA No. 5/95, Nobel Builders (U) Ltd v Seitco SCC. Appic. No. 31/95, Gurdial Singh Dahillous v Shaun Kaur [1960] EA 795.

'It must be pointed out that the issue of appealing against every ruling that is made in the course of the trial has come up before this court on several occasions and decisions on it have been made to the effect that it is not necessary to file separate appeals, one against the interlocutory order made in the course of hearing and another one, against the final decision. To hold otherwise might lead to a multiplicity of appeals upon incidental orders made in the course of the hearing when such matters can more conveniently be considered in an appeal from the final decision'

[26] To illustrate the effect of appeals from interlocutory Orders, on the overall Head suit, is the case example below. That case has suffered the toll of back and forth movement between the trial Court (High Court) and all the Appellate Courts. **The toll on the case has included; a multiplicity of appeals and the passage of twenty – Six (26) years, and the death of one of the Plaintiffs.** The case example is the still pending notorious matter involving Charles James Mark Kamoga (now deceased) and Anor v the Attorney General and 11 Ors. That case; initially filed as: **HCCS No. 1183 of 1997** involves land comprised *inter alia*; in **FRV 44 Foilo 2, Plot 70, at Solent Avenue, Mbuya.** The matters in that suit have never been resolved.

[27] In the present case, it is expedient that all questions in controversy between the parties should be heard, and determined first, and as quickly as possible. Thereafter, without clogging the Court system, should either party wish to appeal, they may freely do so.

Decision of Court:

[28] For the reasons given, this application fails.

1. Leave to appeal is denied.

Masambu 10/8

2. The trial of the **Head Suit No. 051 of 2021** shall proceed on August 31, 2023 at 2:30pm as earlier scheduled.
3. The costs of this application shall abide the outcome of the Head Suit.

I so order,

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P. BASAZA - WASSWA
JUDGE

August 10, 2023

Ruling delivered via email to the parties, and uploaded on the Judiciary ECCMIS Portal.

Email to: info@kaa.co.ug for the Applicant

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