

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT MASINDI
CIVIL SUIT NO. 0096 OF 2021

5 KAMWINE DAPHINE PLAINTIFF

VERSUS

10 1. TUMUSIIME FRANCIS
2. RWAMUKANJO CHARLES
3. KIRYANDONGO DISTRICT LAND BOARD
15 4. COMMISSIONER LAND REGISTRATION..... DEFENDANTS

BEFORE: Hon. Justice Isah Serunkuma.

RULING

20 This ruling is premised on a preliminary objection raised by the plaintiff based on Order 6 rule 28
& 30 of the Civil Procedure Rules, in relation to the competency of the written statement of
defence of the 1st, & 2nd defendants (hereinafter referred to as joint WSD of the 1st & 2nd
25 defendants). The grounds upon which the preliminary objection is based include;

- 1) The written statement of defence be struck out for illegalities stated in the written
statement of defence for acquiring a freehold title from a leasehold where the land was
under dispute (court case)
- 2) Alternatively, but without prejudice, it is frivolous, vexatious and evasive and fails to
30 disclose any reasonable answer to the plaintiff's claim of acquiring the freehold illegally.
- 3) The written statement of defence of the 1st & 2nd defendants contains illegalities and as
such ought to be struck off court record.

The back ground of the above is that; the plaintiff instituted Civil Suit No. 0096 of 2021 against the
defendants for;

- 35
- An order for recovery of land from the 1st defendant,
 - A declaration that the 1st & 2nd defendants are trespassers onto the suit land,

- A declaration that the 1st & 2nd defendants illegally and fraudulently obtained a freehold certificate of title onto the suit land,
- A declaration that the 1st & 2nd defendants are intermeddling with the estate of the late Kobusingye Fiona,
- 5 - A declaration that the 3rd defendant issued a freehold title on the suit land to the 1st defendant fraudulently without giving the former lease owner first priority.
- An order for cancellation of the freehold certificate of title on the suit land granted to the 1st defendant,
- 10 - An order directing the 3rd & 4th defendants to reverse the registration of the 1st defendant onto the suit land and reinstate the entries in favour of the estate represented by the plaintiff.
- In the alternative, an order of compensation of the land and the developments thereon at the current market value,
- General damages, mesne profits and costs of the suit.

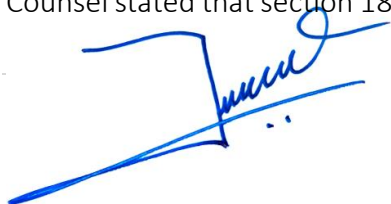
15 One thing I would like to note is that the brief facts on which this preliminary objection was raised, shall not be stated as a background since they have been embedded in this court's analysis of the facts and law.

Representation & hearing

The plaintiff is represented by Counsel Muwanguzi Moses holding brief for Counsel Mutayomba
20 Geoffrey of M/s Agaba & Co. Advocates whereas the 1st & 2nd defendants are represented by Counsel Nabirye Gertrude who held brief for Counsel Kasangaki Simon of M/s Kasangaki & Co. Advocates. Both parties were directed to file their written submissions in relation to the preliminary objection.

Applicants' submission

25 Counsel submitted that the paragraph 3(a), (b), (k), (l) & (m) of the defence is to the effect that they applied for the freehold titles on behalf of the estate of the Late Restetua Rwamukoojo. Counsel stated that section 180 of the Succession Act Cap 162 is to the effect that it is an executor



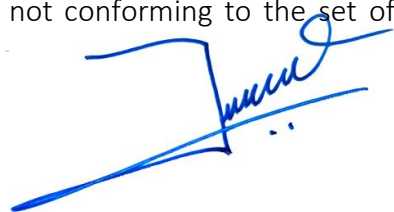
or administrator who is the legal representative for all purposes and all the property of the deceased person vests in him or her as such. Counsel submitted that the 1st & 2nd defendants purport to have dealt with the property alleged to be of the late Restetua Rwamukonjo without letters of administration but in their own capacity.

- 5 Counsel further submitted that while obtaining a freehold certificate of title from public land, certain rules are set by the law such as the Land Act 1998, and the Land Regulations which among others provide for conditions to be undertaken by the Land Committee before grant of the freehold. Counsel stated that Regulations 12, 14, 21 & 22 of the Land Regulations 2004 are all to the effect that a public hearing has to be held and the Area land committee formulates a report.
- 10 Counsel added that sections 6, 7, 11, & 12 of the Land Act are to the effect that an Area Land Committee undertakes a public hearing before the grant is done to ensure that there is no any person claiming interest in the land in question.

- Counsel submitted that in the instant case, the 1st & 2nd defendants clearly state in their defence that they applied for the freehold to save the estate of the late Restetua Rwamukonjo, and admit
- 15 that at the time of acquiring the freehold, there was a court case. Counsel further submitted that the law does not allow grant of a freehold over land that is under dispute and that if one is to be granted such land, both parties need to be present and a public hearing is handled and a report is made. Counsel argued that this is an absolute illegality alluded to by the written statement of defence of the 1st and 2nd defendants.

- 20 Counsel relied on *Ham Enterprises & 2 Ors Vs DTB & Another; HCMA No. 0654 of 2020*, which while quoting the case of *Makula International Vs His Eminence Cardinal Nsubuga & Another (1982) HCB* held that, “a pleading perpetuating an illegality that goes to the root of the dispute between parties cannot be sustained by a court of law rendering the acts carried out as a result of the illegal action of the respondents to be null and void arbitration.”

- 25 In conclusion, counsel submitted that the 1st & 2nd defendants, state in their defence that they applied for a freehold title declaring land as that of the late Restetua Rwamukonjo yet a dispute over the same was in court against the late Fiona Kobusingye and not yet determined and as well not conforming to the set of procedures of grant of a freehold title. Counsel added that the



defence itself is vexatious, and frivolous as it does not answer the claim of acquiring the land illegally and is evasive on that point. Counsel prayed that;

- a. The written statement of defence of the 1st & 2nd defendants be struck out
- b. Judgement against the 1st & 2nd defendants be entered
- 5 c. Damages against the 1st & 2nd defendants.
- d. Order for vacant possession of the suit land as against the 1st & 2nd defendants and any successor in title,
- e. Cancellation of the freehold titles,
- f. Reinstatement of a leasehold title to the estate of the late Fiona Kobusingye.

10 ***Respondents submissions***

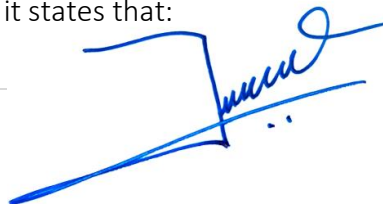
In their response, counsel relied on two issues;

Whether the written statement of defence with a counter claim is incompetent before this court.

Counsel submitted that the written statement of defence with the counterclaim is competent, has merit, is good law and the same should not be struck out with costs to the plaintiff. Counsel relied
15 on the case of ***Ludula & 6 Ors Vs Rev. Canon Luzinda & Ors; HCCS No. 2029 of 2016*** where it was held that,

*“it is my finding that failure by the late Kulanima Kaaya to apply to the Luwero district land board for variation of his lease meant that his lease expired in march 2013 and upon its expiry, the suit land reverted back to the luwero district land board which had the power to allocate it to other
20 people who applied for it. In the case of ***Daphine Negesa Musoke Vs Samu Investments Ltd CACA No. 85 of 2003*** referring to the case of ***Dr. Adeo Danta Kekitiinwa & 3 Ors Vs Edward Mando Wakida CACA No. 003 of 1997***, it was held that once a lease for a definite term expires, the lessee or tenant ceases to have any legal right on the property and is merely a trespasser. The possession automatically reverts back to the lessor”.*

25 Counsel added that section 180 of the succession Act Cap 162 provides for character and property of the executor or administrator and it states that:



“The executor or administrator, as the case may be, of a deceased person is his or her legal representative for all purposes, and all the property of the deceased person vests in him or her as such.”

Counsel submitted that as an administrator, the 2nd defendant has the right to administer the estate of the late Restetua Rwamukonjo. Counsel stated that since the lease of the plaintiff's mother had expired, the plaintiff's mother and or the plaintiff did not have any right pertaining the suit land and the 1st & 2nd defendants would apply for the suit land under a different tenure as per Article 237(3) of the constitution of the republic of Uganda and section 38 (1) of the land act cap 227.

Counsel added that the 1st and 2nd defendants were in occupation of the suit land with other family members and since there was no one to renew the expired lease, the 1st & 2nd defendants applied for the land which they duly divided amongst the beneficiaries including the plaintiff's mother who was given 25 acres of land and the plaintiff sold this share off. Counsel also stated that there is no temporary injunction stopping the 1st & 2nd defendants from dealing with the suit land in Civil Suit No. 0538 of 2007.

Counsel further submitted that this preliminary point of law has no merits and the same ought to be dismissed with costs to the 1st and 2nd defendants since there is no illegality and the fact that the lease had expired and the land had reverted back to the 3rd defendant who had a right to allocate it to any person.

In conclusion, counsel submitted that the objections raised by the plaintiff against the defence are matters of law and require proof. That what is being alleged by the plaintiffs are facts that need to be proved before court and judgement rendered. Counsel prayed that the objections raised ought to be overruled with costs.

Court's Analysis

Having perused the submissions as well as the pleadings of both counsel, it is noted that the issue to be resolved is; ***Whether the joint WSD of the 1st & 2nd defendants is competent before this court.*** The major provisions relied on by the plaintiff is Order 6 rules 28 & 30 of the Civil Procedure Rules.



Rule 28 states;

"Points of law may be raised by pleading.

Any party shall be entitled to raise by his or her pleading any point of law, and any point so raised shall be disposed of by the court at or after the hearing; except that by consent of the parties, or by order of the court on the application of either party, a point of law may be set down for hearing and disposed of at any time before the hearing".

And rule 30 states;

"Striking out pleading.

(1) The court may, upon application, order any pleading to be struck out on the ground that it discloses no reasonable cause of action or answer and, in any such case, or in case of the suit or defence being shown by the pleadings to be frivolous or vexatious, may order the suit to be stayed or dismissed or judgment to be entered accordingly, as may be just".

Having stated the provisions above, this court will determine the competency of the joint WSD of the 1st & 2nd defendants, by considering facts from both the plaint and the WSD under the following issues;

The Joint WSD of the 1st & 2nd defendants entails illegalities in terms of acquiring a freehold title from a leasehold by the 1st & 2nd defendants.

The question to be considered here is whether the raised preliminary objection is competent to be dealt with as such. The main principle governing preliminary objections was considered way back in the case of *Mukisa Biscuit Manufacturing Co Ltd v West End Distributors Ltd [1969] 1 EA 696* where it was held that,

"So far as I am aware, a preliminary objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary point may dispose of the suit..... A preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption

that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion”.

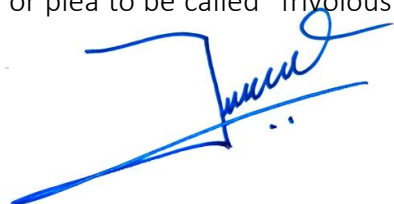
(See also the cases of *Pontrilas Investments Ltd v Central Bank of Kenya, The Attorney General of the Republic of Kenya Reference No. 8 of 2017* the judges with approval of the decision in *Attorney General of the Republic of Kenya vs Independent Medical Legal Unit*.

With reference to the facts beforehand, Counsel for the plaintiffs submitted that the 1st & 2nd defendants purport to have dealt with the property alleged to be of the late Restetua Rwamukonjo without letters of administration and not appearing onto the title as administrators but in their own capacity and without considering the land procedures necessary in acquiring a freehold title from a lease hold. In response, the defendants deny the illegality.

Having considered the above facts in tandem with the legal principles surrounding raising proper preliminary objections, the question of whether the joint WSD of the 1st & 2nd defendants entails illegalities in regards to how the freehold title was acquired from the leasehold should be discarded. It is an issue that cannot be entertained by this court at a level of a preliminary objection as it is not a pure point of law. It is an issue which as per the provisions of the evidence Act shall require both parties to adduce further evidence alluding to their allegations and defence respectively. The same question also requires answers from both the 3rd defendant. Therefore, the first ground of objection is overruled. This court shall consider such grounds in final determination of the main suit.

The joint WSD is frivolous, vexatious and evasive and fails to disclose any reasonable answer to the plaintiff's claim of acquiring the freehold illegally.

This is the second ground raised by the plaintiff relating to the competency of the Joint WSD of the 1st & 2nd defendants. The *Black's law dictionary* defines a proceeding to be vexatious when the party bringing it is not acting bona fide, and merely wishes to annoy or embarrass his opponent, or when it is not calculated to lead to any practical result. Such a proceeding is often described as “frivolous and vexatious,” and the court may stay it on that ground. It further defines an answer or plea to be called “frivolous” when it is clearly insufficient on its face, and does not controvert



the material points of the opposite pleading, and is presumably interposed for mere purposes of delay or to embarrass the plaintiff.

In other words, the plaintiff alleges that the joint WSD of the 1st & 2nd defendants has been brought in bad faith, does not lead to any practical result and is insufficient on its face in relation to acquiring the freehold certificate of title. This court has noted that no pertinent submissions were made in argument of this ground by the plaintiffs neither by the defendants. Considering the joint WSD on the face of it regardless of its foundation, in my view, it is whose answer/facts are sufficient as far as the plaint of the plaintiff indicate or require to be answered.

However, court has noted that the joint WSD being vexatious and frivolous on a basis of acquisition of a freehold title illegally would not amount to a ground of pure law as it shall also call for further and better particulars in terms of evidence from both parties. I am in agreement with counsel for the 1st & 2nd defendants that the objections raised by the plaintiff against the defence are matters of law and require proof.

In the premises, the preliminary objection is overruled and is dismissed with costs to the 1st and 2nd defendants.

I so rule.

Dated and delivered this 20th day of October 2023.



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Isah Serunkuma
JUDGE