

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
LAND DIVISION

CIVIL SUIT NO. 712 OF 2022

FORMERLY CIVIL SUIT NO.170 OF 2018

SAMUEL TURVAGYENDA.....PLAINTIFF

VERSUS

TURVAGY SULEMAN.....DEFENDANT

Before: Lady Justice Alexandra Nkonge Rugadya

JUDGMENT

Introduction:

The plaintiff initially filed this suit against the defendant before the Civil Division, vide **Civil Suit No. 170 of 2018**. He seeks to recover damages of **Ugx 100,000,000/=** alleged to have arisen from the defendant's illegal acts of caveating the land registered in the plaintiff's names, comprised in **Busiro FRV 445 Folio 10 plot 13-15 at Kalitunsi Road, Entebbe**.

During trial the court at Civil division came to the conclusion that the matters raised in that suit required it to visit the locus. The file was thereafter transferred to this division under **Civil Suit No. 712 of 2022**. This court subsequently visited *locus* on 17th March, 2023.

Facts of the case:

The plaintiff is the registered proprietor of the suit land. It is his claim that during the period when the land was caveated by the defendant which he had successfully challenged, he had lost out on potential tenants and/or purchasers of the land.

The defendant admitted that he had lodged the caveat to protect his unregistered interest in the suit land but denied having caused any damage or loss to the plaintiff.

- 5 He alleged that fraud and trespass had been committed against him and filed a counterclaim also seeking damages against the plaintiff; one Hassan Wasswa who had sold the land to the plaintiff; the Uganda Land Commission; and Commissioner, Land Registration. In the claim he sought an eviction order against the plaintiff/counter defendant; special, punitive and general damages, among others.
- 10 In his submission, counsel for the defendant also raised a preliminary objection, claiming that the suit did not disclose any cause of action against him was founded on an illegality, a claim which the plaintiff however refuted.

Representation:

- 15 The plaintiff was represented by **M/s DAB Advocates**, while the defendant/counterclaimant was represented by **M/s Wetaka, Bukenya & Kizito**.

- The parties were directed to file written submissions. As correctly pointed by the plaintiff there is no indication on the court record that the rest of the counter defendants were served or that leave was sought to proceed exparte against them.
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Preliminary objection:

- In his submission counsel for the defendant citing **section 7 of the CPA** argued that this suit was *res judicata* as the matters raised therein had been definitively settled and could not be raised again.
- 25 That the doctrine of *res judicata* signifies that there should be an end to litigation. That to determine if the matter is *res judicata* the test is whether the plaintiff is



trying to bring before court in another way, a fresh cause of action a transaction which has already been adjudicated upon.

In his rejoinder counsel for the plaintiff submitted that in an earlier application, **MA No. 118 of 2017** referred to by the defendant specific orders were sought
5 by the plaintiff/applicant, requiring the Commissioner, land registration to show cause why the caveat lodged by the defendant/1st respondent on the plaintiff's land should not be removed; and for costs of the application.

That in the said application, court had to deal first with the question as to whether the defendant was justified in lodging the caveat on the suit land and
10 whether or not it should be vacated.

That the current suit however seeks general damages suffered by the plaintiff during the time when the defendant unjustifiably kept his caveat on the plaintiff's land.

General damages were not sought for in the application, nor were they awarded
15 by court. His argument went further to suggest that had the damages been sought or awarded in that application then the issue would have been concluded and that is when the doctrine of *res judicata* would be applicable.

According to counsel therefore although the parties and subject matters were the same the cause of actions, the remedies sought and issues for adjudication
20 were different.

Furthermore, that because the caveat was unreasonably maintained on the land the plaintiff as the registered owner had to file a claim for damages and loss suffered as a result.

That since court did not exercise its discretion under **section 33 of the**
25 **Judicature Act**, the plaintiff was not barred by any law to bring a separate claim for the same.



Consideration of the objection:

I have carefully read the arguments and authorities cited by either side, and taken each of them into consideration.

Section 7 of the CPA as cited states:

- 5 ***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 parties, or between the 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***
10 ***issue has been subsequently raised and has been subsequently raised, and has been heard and finally decided by that court.***

The minimum requirement under that provision was stated by the Supreme Court in ***Karia and Anor vs Attorney General and others [2005] 1 EA 83*** that there has to be a former suit or issue decided by a competent court; that
15 the matter in dispute in the former suit between the parties must also be directly or substantially in dispute between the parties in the suit where the doctrine is pleaded as a bar; and the parties in the former suit should be the same parties or parties under whom they or any of them claim, litigating under the same title.

- 20 The spirit of this doctrine is succinctly expressed in the maxim *nemo debet bis vexari pro una et eadem causa*. That is, no one should be vexed twice for the same cause.

Indeed, justice requires that every matter should be fairly tried once; and having been tried once, all litigation about it should be concluded forever between the
25 parties.

It is important to note that the doctrine is applicable not only to points upon which the first court was actually required to adjudicate upon but to every point which properly belonged to the subject of litigation and which the parties



exercising reasonable diligence might have brought forward at the time.
(Kamunye and others vs Pioneer Insurance Society Ltd [1971] EA 267).

The doctrine is not therefore confined to the issues which the court is actually asked to decide, but also covers issues or facts which are so clearly part of the
5 subject matter of the litigation and so clearly could have been raised that it would be abuse of the process of court to allow a new proceeding to be started in respect of them. **(Greenhalgh vs Mallard [1947] 2 All ER 2550).**

I find the above authorities and principles applicable to the present suit.

In the earlier application, the applicant/plaintiff sought orders that the 1st
10 respondent/defendant and commissioner, Land Registration should show cause why the caveat lodged on **Busiro FRV 445 Folio 10 plot 13-15 land at Kalitunsi Road** should not be dislodged; and costs of the application.

Court ruling in favour of the applicant/plaintiff made it absolutely clear that the defendant had no caveatable interest in the suit land. Costs were accordingly
15 awarded to him. The said decision was delivered by this court on 6th February, 2018.

Three months later on 3rd May 2018, the plaintiff through his counsel then **M/s Kangaho & Co. Advocates** filed a suit against the defendant in a different division, seeking damages against him over the same suit property.

20 The plaintiff in the present suit relied on the evidence of four witnesses while the defendant relied on his evidence as a sole witness. Not surprisingly, a number of the documents presented as evidence during the trial in the civil division were not any different from those which were presented during the presentation of the application in this court.

25 Court had to contend with the very similar issues in this suit/counterclaim, the main gist of which was the determination of whether or not the defendant was justified when he lodged a caveat on the suit land.

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Court was required to address the same arguments surrounding the acquisition of the suit land by the parties and deal with the question of whether or not the defendant had caveatable interest in the land to determine whether damages could be awarded to him.

- 5 In the counterclaim, the defendant also seemed to expect court to review or redefine its earlier position and consider him the rightful owner of the same plot of land which was the subject of contention in the application, which would ultimately result in reversing its earlier decision.

10 With all due respect, it would appear the plaintiff intended this as a fresh suit, if not a review of court's earlier decision. Indeed as noted, this court could not have awarded special or punitive damages in an application based on affidavit evidence without backing of documentary evidence at the trial.

15 The suit filed three or so months after obtaining judgment in his favour before another division was therefore not filed in good faith, as it seeks to awaken matters which were already adjudicated upon in his favour; and also raise points which could had been brought to the attention of this court if the plaintiff/applicant had followed the appropriate procedure.

20 The suit therefore appears more or less as an afterthought intended to correct a procedural error, upon the plaintiff realizing that the remedy for damages could not be validly obtained by an application but through a formal suit. It does not come as a surprise therefore that the suit was filed in a different division, merely to disguise the anomaly/irregularity.

25 The evidence of Sulaiman Musoke a holder of powers of Attorney for the plaintiff (**Pw1**) which I have had occasion to read was intended to prove that the plaintiff missed an opportunity to hire out the land at a sum of **Ugx 7,000,000/=**.

Had the plaintiff been diligent, that evidence could have been brought to the attention of this court at the material time to prove his claim.



It is also grossly misleading to argue as counsel for the plaintiff did that this court can and could have exercised its discretion under **section 33 of the Judicature Act** to grant special or punitive damages based on the affidavit evidence. With all due respect, court cannot speculate on the nature of damages that the plaintiff could have with reasonable diligence have envisaged in this suit.

For those reasons, I would therefore also reject the plaintiff's argument that the matters raised in the application were different from those arising in this suit. Bringing them separately was an abuse of court process. I would also add that the counterclaim is also misguided as it raises matters which equally, were *res judicata*.

In conclusion therefore, since this present case raises issues and facts which were clearly part of the previous application and could have been raised therein but were not, I would agree that the objection by the defendant that the matter was *res judicata* indeed holds merit.

The suit and counterclaim are accordingly dismissed.


Costs awarded to the defendant.


20 **Alexandra Nkonge Rugadya**

Judge

31st October, 2023

Delivered on 31/10/2023
By email



31/10/2023