

1.OMUTAKA WALUSIMBI YUSUF MBIROZANKYA
2.THE REGISTERED TRUSTEES OF FUMBE CLAN
..... APPLICANTS

VERSUS

PASTOR MUWASI JAMES WILISON RESPONDENT

RULING.

1. Omutaka Walusimbi Yusuf Mbirozankya and The Registered Trustees Of Fumbe Clan herein referred to as the applicants brought this application against Pastor Muwasi James Wilison herein after referred to as the respondent under Section 98 of the civil procedure Act Cap 71, Order 36 rules 1 and 4, Order 52 rule 1 and 3 of the Civil Procedure Rules for orders that;

i) The Applicants be granted unconditional leave to appear and defend civil suit No.1127 of 2023.

Hammer-

- ii) Costs of the application be provided for.

Background;

2. The 1st and 2nd applicants are the 7th and 6th defendants in civil suit No.1127 of 2023 which suit was brought by the respondent as a summary suit. That the respondent's suit that is civil suit No.1127 of 2023 is barred in law against the 2nd applicant and that the said suit does not fall under the ambit of 0.36 of the civil procedure rules which clearly provides for the rules governing a summary suit.
3. The applicants further state that they have a good and plausible defense which raises triable issues to the respondent's suit which is civil suit No.1127 of 2021, hence this application.

Applicant's evidence;

4. The application is supported by an affidavit in support deposed by Omutaka Walusimbi Yusuf Mbirozankya the 1st applicant which briefly states as follows;
- i) That the 2nd and 1st applicants are the 7th and 6th defendants in the summary suit filed by the respondent civil suit No.1127 of 2023.



- ii) That the respondent wrongfully without any legal basis sued the applicants by way of a summary suit for enforcement of a sale agreement to which the applicants were not a party to.
- iii) That the 2nd applicant is the registered proprietor of land comprised in Block 186 Plot 3 at bakka wakiso district.
- iv) That the respondent's suit against the applicants is barred in law under the principle of privity of a contract and cannot be enforced against the parties.
- v) That the respondent's suit does not fall under the ambit of a summary suit as stated under the civil procedure rules.
- vi) That the respondent cannot recover unsubstantiated interest under a summary suit.
- vii) That the applicants have a good and plausible defense to civil suit No.1127 of 2023 which defense raises triable issues.
- viii) That it is just and equitable for the applicants to be granted unconditional leave to appear and defend civil suit No. 1127 of 2023.

Respondent's evidence;

5. The application is responded to by an affidavit in reply deposed



by Pastor Muwasi James Wilson the respondent which briefly states as follows;

- i) That the applicants are privy to the contract by implication since they executed the consent with the 1st, 2nd, 3rd and 5th defendants in the head suit granting 250 acres of land but still declined to survey the same off from the mother title.
- ii) That civil suit No.1127 of 2023 is properly brought under summary procedure as the applicants admit that they are still the registered proprietor to the suit land where I purchased 35 acres from the beneficiaries.
- iii) That my claim has a basis because the applicants refused to surrender 250 acres of land from where I purchased 35 accrues.
- iv) That the applicants have no plausible defense to civil suit No.1127 of 2023.
- v) That the applicants defense does not raise any triable issues whatsoever to civil suit No.1127 of 2023.

Representation;

6. The applicants were represented by Mr. Stanley Oketcho of Gem



advocates there was no representation from the respondent. Both parties filed their affidavits and the applicants filed their submissions which I have considered in the determination of this application.

Issues for determination;

Whether the applicants should be granted leave to appear and defend civil suit No.1127 of 2023 brought by way of summary procedure?

Resolution and determination of the issue;

7. The civil procedure rules under 0.36 provide for the law on summary suits and specifically rule 2 which is to the effect that; All suits— ***(a) where the plaintiff seeks only to recover a debt or liquidated demand in money payable by the defendant, with or without interest, arising i) upon a contract, expressed or implied (as, for instance, on a bill of exchange, promissory note or cheque, or other simple contract debt (ii) on a bond or contract written for payment of a liquidated amount of money; (iii) on a guaranty where the claim against the principal is in respect of a debt or***

liquidated amount only, (iv) on a trust, or (v) upon a debt to the Government for income tax; or (b) being actions for the recovery of land, with or without a claim for rent or mesne profits, by a landlord against a tenant whose term has expired or has been duly determined by notice to quit, or has become liable to forfeiture for nonpayment of rent, or against persons claiming under the tenant, may, at the option of the plaintiff, be instituted by presenting a plaint in the form prescribed endorsed "Summary Procedure Order XXXVI" and accompanied by an affidavit made by the plaintiff, or by any other person who can swear positively to the facts, verifying the cause of action, and the amount claimed, if any, and stating that in his or her belief there is no defense to the suit.

8. The reading of this rule provides for different situations when one might opt for a summary suit under the civil procedure rules and the grounds for opting for the same.
9. The same procedure rules provide for circumstances when one might apply for leave to appear and to defend a summary suit and once the said leave is granted the summary suit turns to

an ordinary suit. However, before such leave is granted there are conditions the applicant needs to first furnish to court.

10. The civil procedure rules under order 36 rule 4 is to the effect that a defendant who has been served with summons under 0.36 may seek leave to appear and defend the suit.

11. The settled principle of law is that for an application for leave to appear and defend to be granted, the applicant has to show that there is a bonafide triable issue of fact or law that they will advance in the defense of the suit.

12. I will draw reference to **Makula Interglobal Trade Agency vs Bank of Uganda [1985] HCB 65**, at page 66 court held that; ***“Before leave to appear and defend is granted, the defendant must show by affidavit or otherwise that there is a bonafide triable issue of fact or law. When there is a reasonable ground of defence to the claim, the defendant is not entitled to summary judgment. The defendant is not bound to show a good defence on the merits but should satisfy the court that there was an issue or question in dispute which ought to be tried and the court shall not enter upon the trial of issues disclosed at this stage.***

13. In an application for leave to appear and defend a summary suit, there must be sufficient disclosure by the applicant, of the nature and grounds of his or her defense and the facts upon which it is founded. Secondly, the defense so disclosed must be both bona fide and good in law. A court that is satisfied that this threshold has been crossed is then bound to grant unconditional leave. Where court is in doubt whether the proposed defense is being made in good faith, the court may grant conditional leave, say by ordering the defendant to deposit money in court before leave is granted. **(See; *Children of Africa vs Sarick Construction Ltd H.C Miscellaneous Application No. 134 of 2016*).**

14. The above referred to authorities take me to an understanding that in an application for leave to appear and defend a summary suit the applicant need not prove the triable issues at this stage but rather paint to court a picture that he has triable issues in his defense to the suit.

15. In the instant application, the applicants state that they have a plausible and good defense to civil suit No.1127 of 2023 brought by way of summary suit by the respondent and the

same is proved in the affidavit attached. The applicants further claim that the defense raises triable issues that are to be determined by court.

16. The respondent avers that the applicants do not have any plausible defense to the summary suit and that there are no triable issues that their defense raises that need to be determined by this court.

17. Upon perusal of all the pleadings adduced by both parties to this application, among the issues that court needs to pronounce itself on are;

i) The validity and enforceability of the sales agreement.

ii) Whether the respondent had notice of any existing interest over the suit land.

iii) Who has a good title to the suit land?

18. I am of the view that these issues cannot be amicably settled through a summary suit.

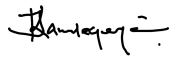
19. Therefore, it is my finding that the applicants have ably demonstrated that they have a defense which raises triable issues to be determined by this court.

20. The applicants shall file a defense to the suit within 15

days from the date of delivering this ruling.

21. Costs shall abide the outcome of the main suit.

I SO ORDER.



NALUZZE AISHA BATALA

JUDGE

12/02/2024