

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
LAND DIVISION
MISCELLANEOUS APPLICATION NO. 2881 OF 2023
(ARISING FROM CIVIL SUIT NO. 0107 OF 2023)

MBAINÉ ARCHANGEL ::::::::::::::::::::::::::::::::::: APPLICANT

VERSUS

1. PROSCOVIA NAMUSOKE

2. KAKEMBO CHRIS ::::::::::::::::::::::::::::::::::: RESPONDENTS


BEFORE: HON. LADY JUSTICE NALUZZE AISHA BATALA

RULING.

Introduction:

1. This was an application by notice of motion brought under Section 98 of the Civil Procedure Act, Section 33 & 39 of the Judicature Act Cap 13, Order 6 Rules 28 & 29, Order 7 rule 11(d) and Order 52 rules 1 & 3 of the Civil Procedure Rules (CPR) for orders that: -

- i) That civil suit No.107 of 2023 be dismissed as it offends the les pendens rule as there is civil suit No.136 of 2019 in respect of the same matter which is still pending in court.



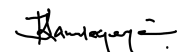
- ii) The costs of this application be provided for.

Background;

2. The respondents filed civil suit No.107 of 2023 where the instant application arises seeking for orders of eviction against the applicants/defendants from land comprised in Block 404 Plot 105 at Buzzi and cancellation of title to the suit land.
3. The applicants filed civil suit No.136 of 2019 against the respondents for orders of specific performance of a contract of sale over land comprised in Busiro Block 404Pplot 1052 herein referred to as the suit land, the same suit is still pending before court, hence this application.

Applicant's evidence;

4. The application is supported by an affidavit in support deponed by Mbaine Archangel the applicant which briefly states as follows;
 - i) That I was sued with another person by the respondent in civil suit No.107 of 2023.
 - ii) That I filed a written statement of defense to civil suit No.107 of 2023 in which we indicated that there is another earlier suit in court civil suit No.136 of 2019 which is pending in this court.



- iii) That the respondents are aware of civil suit No.136 of 2019 as court issued an injunction arising from the said suit.
- iv) That what is stated is true and correct to the best of my knowledge.

Respondents evidence;

5. The application is responded to by an affidavit in reply deponed by Kakembo Chris the 2nd respondent which briefly states as follows;

- i) That civil suit No.107 of 2023 and civil suit No.136 of 2019 are based on different causes of action.
- ii) That civil suit No.136 of 2019 is for trespass and does not involve the same parties as in civil suit No.107 of 2023 and does not offend the les pendens rule.
- iii) That civil suit No.136 of 2019 is a suit which the applicant instituted when and after he failed to file an appeal against the order of civil revision No.17 of 2018 where in the judge ruled that the applicant is at liberty to appeal against the respondents.



- iv) That the respondents filed a counter claim in their defence in civil suit No.136 of 2019 which is yet to be heard and determined.

Representation;

6. The applicants were represented by Mr. Serwadda Anguzos of M/S Serwadda & Co.Advocates whereas there was no representation from the respondent. Both parties filed their affidavits and submissions which I have considered in the determination of this application.

Issues for determination;

Whether civil suit No.107 of 2023 can be dismissed under the les pendens rule?

What remedies are available to the parties?

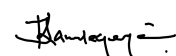
Resolution and determination of the issues;

7. Black's Law Dictionary (8th Ed) defines "les pendens", as a Latin expression which simply refers to a "pending suit or action". The



Oxford Dictionary of Law (5th Ed) also defines the expression in similar terms. In the context of Section 6 of the civil procedure rules which encapsulates the principles that underpin the rule, it simply means that no court ought to proceed with the trial of any suit or proceedings in which the matter in issue is also directly and substantially in issue in a previous instituted suit or proceeding; and or the previously instituted suit or proceedings is between the same parties and or the suit or proceeding is pending in the same or any other court having jurisdiction to grant the reliefs claimed.**(See; Silver Springs International Hotel Ltd Vs Hotel Diplomate Ltd And Anor Civil Suit No.227 Of 2011)**

8. In the instant application, I will start with the issue as to whether the matter(s) in issue in the civil suit No.107 of 2023 are directly and substantially in issue in civil suit No.136 of 2019.
9. Civil suit No.107 of 2023 Proscovia Namusoke and Kakembo Chris Vs Mbaine Archangel, Bwanika Yasin & Naluggo Shamim is for recovery of land comprised in Busiro Block 404 Plot 1052 land at Buzzi which Proscovia Namusoke allegedly acquired as a beneficiary and the defendants are in possession of the same suit land. The plaintiffs pray for orders of eviction against the

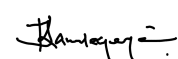


defendants, cancellation of the 1st defendant's certificate of title and have the same registered in the names of the plaintiffs, general and punitive damages.

10. Whereas civil suit No.136 of 2019 Mbaine Archangel vs Namusoke Prossy and Kakembo Christoper is for actions of specific performance of a contract of sale of land comprised in Busiro Block 404 Plot 1052 land at Buzzi, the plaintiff alleges that the defendants sold the suit land to him, therefore prays that the 1st defendant causes the registration of proprietorship into her names and thereafter transfer the land to the plaintiff, permanent injunction against the defendants and general damages.

11. The reading of the complaints in the two mentioned suits takes my mind to an understanding that the claims in the two different suits are not the same and they are all against different parties despite the fact that they relate to the same suit land.

12. The second condition relates to whether civil suit No.107 of 2023 and civil suit No.136 of 2019 are between same parties, it is apparent on the face of the pleadings in the two different suits that the parties involved are; civil suit No.107 of 2023 is between Proscovia Namusoke and Kakembo Chris who are the plaintiffs



and Mbaine Archangel, Bwanika Yasina and Nalugo Shamim who are the defendants, whereas civil suit No.136 of 2019 is between Mbaine Archangel the plaintiff and Namusoke Prossy and Kakembo Christopher as the defendants.

13. The 1st defendant in civil suit No.107 of 2023 happens to be the plaintiff in civil suit No.136 of 2019, the names of the plaintiffs in civil suit No.107 of 2023 and those of the 1st and 2nd defendants in civil suit No.136 of 2019 are not the same, further civil suit No. 107 of 2023 introduces the 2nd and 3rd defendants who are not party to civil suit No.136 of 2019.

14. In such a situation, I am unable to interpret the phrase “same parties” in the context of the *les pendens* rule, placing such an interpretation on the rule would lead to an absurdity. Further civil suit No.107 of 2023 introduces new parties whose interests and claims cannot be settled and determined in civil suit No.136 of 2019 since they are not parties to the same suit. The only same party in the two mentioned civil suits is Mbaine Archangel.

15. Further this is an application where all the parties in the two different civil suits are claiming from different parties it would have been applicable and viable if the defendants in the two suits were



claiming against the same person. **(See; Kazooba Francis Vs M.K Creditors Ltd And Ors, Civil Suit No.218 Of 2016)**

16. There is no way the claims of the plaintiffs in civil suit No.107 of 2023 could be settled in civil suit No.136 of 2019 since they are not parties to the same suit.
17. In the premises I don't find the phrase same parties or parties under whom they or any of them claim as per the les pendens rule applicable in the instant situation.
18. Therefore, it is the finding of this court that civil suit No.107 of 2023 does not offend the les pendens rule as alleged by the applicant.
19. However, due to the fact that both civil suits (civil suit No.107 of 2019 and N0.136 of 2023) are still in their preliminary stages pending before the same court and speak to the same subject matter in which similar questions of law and fact might arise, parties can consider having the same consolidated to avoid multiplicity of suits and conflicting decisions of court.
20. Therefore, the instant application stands dismissed by this honorable court with no orders as to costs.



I SO ORDER

A handwritten signature in black ink, appearing to read 'Naluzze Aisha Batala'.

NALUZZE AISHA BATALA

JUDGE

26th /02/2024