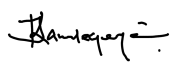




- ii) The costs of this application be provided for.

**Background;**

2. The subject matter of the suit is land formerly comprised in Kyadondo Block 195 Plot 328. This land was hitherto registered in the names of Kiragga Ssanyu Lukanga. Upon his death, Muwanga James Sempewo and Walugembe Kenneth were duly appointed as the Administrators of the estate of the late Kiragga Ssanyu Lukanga.
3. The said administrators subsequently sold and transferred the land to the Applicant, who later caused several sub divisions of the land and has since sold and transferred several Plots therefrom.
4. In the course, the Respondents started asserting ownership over part of the land registered in the names of the Applicant, claiming that they have developments thereon. Subsequently, the Respondents filed H.C.C.S NO. 1264 of 2023 against the Applicant and Muwanga James Sempewo and Walugembe Kenneth for recovery of land, with an order being sought for cancellation of the certificate of title comprised in Kyadondo Block 195 Plot 328, apparently registered in the names of the Applicant, hence this Application.
- 

**Applicant's evidence;**

5. The application is supported by an affidavit in support deposed by

Mr. Kawuma Yusuf the applicant which briefly states as follows;

- i) That on the 26<sup>th</sup> of November 2023, the respondents/plaintiffs filed civil suit No.1264 of 2023 against the applicants.
- ii) That I have since filed a written statement of defence contesting the competence of the suit.
- iii) That the respondents/plaintiffs claim is for an interest being derived from a purported tenancy agreement.
- iv) That the respondents/plaintiffs suit is incompetent and the same should be struck out for being incompetent.

**Respondent's evidence;**

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

Mr. Magandaazi Denis the 1<sup>st</sup> respondent which briefly states as follows;



- i) That this application is meant to prejudice our application for amendment vide Misc. Application No. 3861 of 2023 which I filed in this honorable court on the 21<sup>st</sup> day of December, 2023
- ii) That our application for amendment vide Misc. Application No. 3861 of 2023 which we filed earlier than this application deals with some of the issues raised in the current application and is fixed for 14<sup>th</sup> March, 2024 at 11:00am.
- iii) That the civil suit is subject to a matter of illegality which is contentious and cannot be determined through affidavit evidence.

**Representation;**

7. The applicant was represented Mr. Joseph Kyazze and Alex Kamukama of M/S Magna Advocates whereas the 1<sup>st</sup> and 2<sup>nd</sup> respondent were represented by Rwalinda Jambo Godfrey of M/S Jambo & co. advocates. Both parties filed their affidavits and submissions which I have considered in the determination of this application.



**Issues for determination;**

- i) Whether this is a proper and competent application for determination on the basis of preliminary objections?**
- ii) Whether the plaint in HCCS NO.1264 OF 2023 Magandaazi Denis & Anor Vs Kawuma Yusuf & Others be struck out for being incompetent as the claim is premised on an illegal and legally unenforceable tenancy agreement.**
- iii) Whether the plaint in HCCS NO. 1264 of 2023 Magandaazi Denis & Anor Vs Kawuma Yusuf & Others be struck out as the plaint discloses no valid cause of action?**
- iv) Whether the plaint in HCCS NO. 1264 OF 2023 Magandaazi Dennis & Anor Vs Kawuma Yusuf & Others be struck out as the claim in the plaint and the reliefs sought therein is in respect of land described in the plaint, as Kyadondo Block 195 Plot 328 which no longer exists?**
- v) Whether the plaint in HCCS NO. 1264 OF 2023 Magandaazi Denis & Anor Vs Kawuma Yusuf & Others be struck out as the respondents who are the plaintiffs**

**therein lack locus standi to maintain an action for recovery of land or cancellation of title against the applicant.**

- vi) Whether the suit vide HCCS NO. 1264 OF 2023 Magandaazi Denis & Anor Vs Kawuma Yusuf & Others be struck out on account that it is frivolous and vexatious incompetent and abuse of court process?**
- vii) Whether as a result, the applicant is being subjected to unwarranted litigation in defending an incompetent suit/claim?**
- viii) What are the remedies available to the parties?**

**Resolution and determination of the issues;**

**Issue 1. Whether this is a proper and competent application for determination on the basis of preliminary objections.**

8. This is an application brought by way of notice of motion under section 33 of the judicature act, section 98 of the civil procedure act and order 52 rules 1,2 and 3 of the civil procedure rules the two mentioned sections vest the high court with inherent powers to ensure that the ends of justice are met whereas order 52 rule

1,2 and 3 provide the procedure under which this application was brought.

9. The applicant further relies on sections 59 and 176(c) of the registration of titles act which speak to the fact that a certificate of title shall be conclusive evidence and protection of the registered proprietor against ejectment except in the case of a person deprived of any land by fraud as against the person registered as proprietor of that land through fraud or as of against a person deriving otherwise than as a transferee bona fide for value from or through a person so registered through fraud respectively.
10. Counsel for the applicant states in his submissions that the procedure under which this application was brought, is the best procedure to have all the objections raised determined. He further relied on the provisions of order 6 rules 28,29 & 30 of the civil procedure rules, I agree with the submissions of counsel for the applicant that the said rules give room to litigants to raise preliminary points of law and that court in determining the said points of law is enjoined to only look at the pleadings of the parties and the annexures there onto.



11. Counsel for the applicant further submits that he moves court under order 7 rule 1 and 11 of the civil procedure rules which order is in respect of the contents of a plaint and circumstances under which a plaint may be rejected, to include circumstances when the plaint does not disclose a cause of action against the defendant
12. The 1<sup>st</sup> respondent in his submissions states that the preliminary objection raised by the applicant is a contentious matter that cannot be resolved through affidavit evidence as opted by the applicant, he further states that the applicant seeks to challenge the tenancy agreements entered into by the respondents on grounds that the same agreements were illegal.
13. Counsel for the respondents' further states in his submissions that section 59 of the registration of titles Act does not apply to the facts at hand, since the respondents claim in the main suit is protection of their rights as tenants but not protection of proprietary interest as alleged by counsel for the applicant.
14. Upon perusal of the affidavits and submission by both parties, I am of the view that the preliminary objections which are points of law raised by the applicant speak to the following questions;

***Does the plaint vide civil suit No.1264 of 2023 disclose a cause of action against the applicant/defendant? Do the respondents/plaintiffs have the locus to institute the said suit? What's the legality of the tenancy agreements entered into by the respondents/plaintiffs?***

15. I do take notice of the laws under which the applicant moves court which are sections 33 of the judicature act, section 98 of the civil procedure rules, order 6 rules 28,29 and 30. However parties should take note that in adjudicating upon the said provisions, the discretion lies within the powers of court. **(See; Crane Bank Ltd (in receivership vs. Sudhir Ruparelia & another CACA No.282/2019).**

16. Upon perusal of the plaint vide civil suit No.1264 of 2023 under paragraph 7 the plaintiff discloses the particulars of the causes of action which are fraud and illegality, the plaintiffs further state their place of standing in the suit and under what capacity they are bringing the said suit.

17. Delving into facts concerning the validity and legality of their tenancy agreements would be taking this court to the merits of the case and the evidence adduced by parties to this application.

18. The preliminary objections raise contentions and complex issues that cannot be determined just by a mere look at the pleadings of the parties without giving an opportunity to the said parties to adduce evidence in court which is to include adducing witnesses would be prejudicial.
19. The instant application is a miscellaneous application with a main suit under which it arises brought by way of an ordinary plaint, which is the best procedure to have contentious and complex matters put to rest.
20. As rightly argued by counsel for the respondents, the matters and issues in contention in the instant application have a bearing to civil suit No.1264/2023 which is still pending before this honourable court. These are matters and issues of evidence which need proof in court by adducing evidence by both parties.
21. Parties should take kin note that the best procedure to adopt when disputed issues are complex and contentious is by way of an ordinary plaint which is the procedure adopted by the respondents in the main suit such that parties have the chance to call their witnesses and court will have the chance to analyze the evidence before it, unlike by way of affidavit evidence. (**See; Adam Jacob**

***Muhammed & Anor V. Madaya Rogers Misc. Application 0014  
of 2013 before Justice Henry Kaweesa)***

22. The reading of the pleadings in the instant application show that the applicant is avoiding to take the long course of trial by plaint and opted for a shortcut process of resorting to trial by affidavit evidence since the issues raised by the applicant are to be best resolved upon hearing and analysing evidence in the main suit.
23. This honourable court proceeding to pronounce itself on the merits of the main suit without hearing and according the parties an opportunity to adduce evidence would be shutting the doors of justice to the parties in the suit.
24. In the result therefore, this issue is resolved and determined in the negative.

Issue 2; Whether the plaint in HCCS NO.1264 OF 2023 Magandaazi Denis & Anor Vs Kawuma Yusuf & Others be struck out for being incompetent as the claim is premised on an illegal and legally unenforceable tenancy agreement.



25. Counsel for the applicant in his submissions states that it is a legal requirement that where the cause of action is founded on a specified capacity of the plaintiff the same must be pleaded and the documents under which the same is derived must be attached onto the plaint.

26. Counsel further submits that the basis of the plaintiff's claim is the tenancy agreement that gives them the tenant capacity and court should scrutinize the tenancy agreement attached to ascertain its legality. Counsel clearly pointed out the facts that speak to the illegality of the tenancy agreement to include that the tenancy agreement relates to registered land Kyadondo Block 195 Plot 328 and purport to describe Nsimbe Daniel through his alleged agent Samuel Biwoozi Ssuna, as the Landlord renting out the land.

27. This is not pleaded in the plaint and no evidence is attached to show that Nsimbe Daniel was at the time, the registered proprietor of the land so described therein, so as to qualify as the Landlord of the land. He further states that Nsimbe is described in the agreement as a bonafide occupant letting out the land for 10 years. In the plaint, there are no facts pleaded, which would demonstrate

how Nsimbe became a Boanfide occupant of the land so as to transact in it as such.

28. Counsel for the respondents in his submissions in reply states that the tenancy agreements executed between Daniel Nsimbe and the respondents are valid and the applicant's claim that Samuel Biwoozi Ssuna did not have authority from the deceased to execute the same is an afterthought and cannot vitiate the validity of the respondents' claim in the main suit.

29. I have carefully perused the tenancy agreements attached on the plaint and submissions of both counsel and I acknowledge the point raised by counsel for the applicant that this honorable court in ascertaining the legality of the said tenancy agreements is enjoined to only look at the face of the agreement.

30. However, this is not the case at hand, the legality of the tenancy agreements attached is rooted to the period of the tenancy as per the agreements and who was the landlord for the period stated in the same agreements, these are facts that are subject to evidential proof.

31. I am of the point that to reach at a just and fair finding regarding the said agreements, this honorable court should be accorded the

benefit to hear and look at more evidence that is to be adduced by both parties in the main suit.

32. The legality of the tenancy agreements is a contentious matter that requires further evidence which is subject to a fair trial in the main suit where parties will have the opportunity to call their witnesses to prove the same.

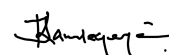
33. In the circumstances, this honorable court will not pronounce it self on the legality of the said agreements without analyzing both oral and written evidence from both parties, therefore this issues is resolved and determined in the negative.

Issue 3; Whether the plaint in HCCS NO. 1264 of 2023 Magandaazi Denis & Anor Vs Kawuma Yusuf & Ors be struck out as the plaint discloses no valid cause of action against the applicant?

34. Referring to the plaint vide HCCS No.1264 of 2023 under paragraphs 6 and 7, the plaintiff discloses the facts for the cause of action and the particulars of the said causes of action which are illegality and fraud. Aspects to deal with the merits of the said particulars of the causes of action are to be best resolved upon looking into the evidence of the parties.



35. Counsel for the applicant submits that Order 6 rule I and Order 7 Rule I of the civil procedure rules require a Plaintiff to plead material facts that give rise to a cause of action and right to relief against the Defendant the facts must allude to detailed information. This was considered in **Ainomugasho winfred & others vs. Fatuma Nalumansi HCMA No, 2084/2016**. In that case, the Court held that the Plaintiff must state information regarding circumstances that exist or events that occurred.
36. In response counsel for the respondents submit that the facts constituting the respondents/plaintiffs cause of action against the applicant are well established in paragraph 6 of the plaint and key to note is that they entered a valid tenancy agreement with bonafide occupants of the land as per the tenancy agreements to wit; they enjoyed rights by virtue of that transaction and that the applicant by virtue of his eviction notices infringed their tenancy rights.
37. The question as to what amounts to a material and relevant facts in a suit is a case-to-case basis, for one to fully understand what amounts to a material and relevant fact he or she ought to



have first appreciated the merit of the case, this is something that cannot be achieved just by a mere perusal of the plaint.

38. I am also alive to the principle of law that for there to exist a cause of action, one must have enjoyed a right which right was infringed upon by the defendant. (***See; Auto Garage and ors vs Motokov 1971 EA***)

39. The respondent's/plaintiffs' states in his plaint how he is a tenant as per the tenancy agreement and that he enjoyed the right accruing from a land lord tenant relationship and the eviction notices issued by the applicant was a breach of their tenancy rights.

40. This honorable court looking further into the details of the said notions that constitute a cause of action will require adducing further evidence in court other than the evidence attached on the plaint.

41. In the premises it is to the finding of this honorable court that the plaint vide civil suit No.1264 of 2023 discloses a cause of action against the applicant/defendant.



Issue 4; Whether the plaint in HCCS No. 1264 of 2024 Magandaqzi Dennis & Another Vs Kawuma Yusuf & Others be struck out as the claim in the plaint and the reliefs sought therein is in respect of land described in the plaint, as Kyadondo Block 195 Plot 328 which no longer exists.

42. The subject matter of civil suit No.1264 of 2023 is well described by the plaintiff/respondent herein referred to as the suit land as required by order 6 and 7 of the civil procedure rules.

43. Counsel for the applicant submits that the suit land has since ceased to exist upon subdivision and various plot numbers have been created from the initial suit land hence rendering the plaint and reliefs sought there in unachievable.

44. In his reply, counsel for the respondents clearly refers to the paragraphs in the plaint especially paragraph 6 under which the plaintiff/respondent discloses a fact that the plaintiffs/respondents entered into a tenancy agreement with the registered proprietor to the suit land, which suit land has since been subdivided into various plots to include Plots 128, 6542, 6543, 6544, 6545 and 6546 to defeat the rights of the respondents, the

respondent went further ahead to adduce mutation forms to that effect.

45. The submissions of both parties take to an understanding that it is disputed as to whether the suit land still exists or not and whether the same has since been sub divided by the applicant.

46. This honorable court is enjoined with the discretion to ensure that substantive justice is administered, the disputed fact as to whether the said suit land still exists or not is subject to a finding of court to ensure that a just and fair decision is reached.

47. Further, the chief justice issued practice directions No.1 of 2007 that relate to the issuance of orders concerning registered land and therein visiting locus in quo was established, the visiting of locus enables court to fully determine issues regarding land justly and fairly. Therefore, questions as to whether the suit land still exists or not are subject to findings of court that are to be best achieved in the main suit.

Issue 5. Whether the plaint in HCCS NO. 1264 OF 2023 Magandaazi Denis & Anor Vs Kawuma Yusuf & Others be struck out as the respondents who are the plaintiffs therein lack locus standi to



maintain an action for recovery of land or cancellation of title against the applicant.

48. I reiterate my position and findings while resolving and determining issue 1, the respondents clearly state in their plaint vide civil suit No.1264 of 2023 the capacity under which they brought the same suit.

49. Locus standi has been defined to mean a place of standing for one to bring a suit and the respondents state that they are tenants vide the tenancy agreements attached onto the plaint which form their place of standing to bring the suit. **(See; Dima Domnic vs Inyani and Anor HCCD 154 of 2017 before hon. Justice Stephen Mubiru)**

Issue 6 & 7 Whether the suit vide HCCS NO. 1264 OF 2023 Magandaazi Denis & Anor Vs Kawuma Yusuf & Others be struck out on account that it is frivolous and vexatious incompetent and abuse of court process?

Whether as a result, the applicant is being subjected to unwarranted litigation in defending an incompetent suit/claim?



50. A suit is deemed to be frivolous and vexatious where the pleadings do not disclose any reasonable cause of action, and where the alleged cause of action, which, in light of the pleadings has no chance of success **(See; Drummon-Jackson versus British Medical Association cited in Ismail Serugo versus KCCA and AG SCCA No, 2/1998)**
51. Counsel for the applicant submits that the plaint vide civil suit No.1264 of 2023 does not disclose any cause of action and the alleged causes of action which are illegality and fraud have no chances of success against the applicant.
52. In response counsel for the respondent in his submissions states that the success of the causes action stipulated in the plaint by the plaintiff lies in proving the facts of the case and the facts of the instant case are to be best proved upon adducing evidence by both parties to enable court reach a fair decision.
53. I am in agreement with the submissions of counsel for the respondent, the plaint clearly states the particulars of the causes of action and the facts leading to the same, the chances of success are something that is disputed.



54. Therefore, issues 6 & 7 are determined and resolved in the negative.

55. Before I take leave of this application, I will quote the words of Windham JA at Page 58 in **Nas Airport Services Limited V. The Attorney General of Kenya [1959] 1 EA** where he had this to say about actions that are brought similarly to order 6 rule 28 of the civil procedure rules ***“...the point of law must be one which can be decided fairly and squarely, one way or the other, on facts agreed or not in issue in the pleadings, and not one which will not arise if some fact or facts in issue should be proved .....*”**

56. Litigants and counsel should be very careful while bringing actions under order 6 rules 28 and 29 of civil procedure rules, the points of law they always intend to rely on should only be based on the pleadings of the parties and attachments thereunto. Situations where courts need to look at further evidence to determine the said points law then actions under 0.6 rule 28 are most likely to fail.

57. Points of law should speak to the fact that all facts adduced are correct and undisputed by the opposite party but where the points

are contested and require discretion of court then the same points cease to be points of law but rather facts to be proved by court upon parties adducing evidence.

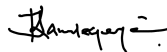
58. Further this is a land dispute that involves different parties claiming different interests, the same dispute can be best brought to end by giving all parties that claim interest in the said land an opportunity to adduce evidence and present their cases. This is something that can be best achieved through an ordinary suit brought by way of a plaint.

59. In the circumstances, it is to the findings of this honorable court that civil suit No.1264 of 2023 proceeds on its own merit.

60. The application to have the said suit dismissed fails and is hereby dismissed.

61. Costs of the application to be in the main cause.

**I SO ORDER.**



**NALUZZE AISHA BATALA**

**JUDGE**

**06/03/2024**

