

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
LAND DIVISION
CIVIL SUIT NO. 92 OF 2008

1. OLIVIA NSUBUGA BANYIKIDDE
2. PRAFUL CHANDRA R. PATELPLAINTIFFS

VERSUS

1. VORA LTD
2. THE UGANDA LAND COMMISSION
3. THE REGISTRAR OF TITLES.....DEFENDANTS

BEFORE HON. LADY JUSTICE PERCY NIGHT TUHAISE
RULING

When this matter was called for hearing, Mr. Paul Sebunya learned Counsel for the Plaintiffs informed court that the matter had initially been adjourned *sine die* because there was a pending suit in a different court, namely ***Olivia Banyikidde & 2 Ors V Swala Brothers & 2 Ors Civil Suit No. 1001 of 2004*** regarding the determination of ownership of the suit property. He stated that the judgment in the said case was eventually delivered and it was not in favour of the Plaintiff, and he has since appealed the decision. He therefore requested this court to further adjourn the case until the appeal is disposed of.

This was opposed by Mr. Sebugenyi learned Counsel for the Defendants who implored this court to allow the Defendants to proceed and raise a preliminary point of law (PO) that the Plaintiff in this matter has no *locus* to institute the suit against the Defendants. He argued that since the judgment which was the basis of this court initially adjourning the case *sine die* had been delivered, the hearing of the same should proceed and the pendency of the intended appeal should not bar this court in determining the issues before it.

In rejoinder, Counsel Sebunya for the Plaintiffs argued that since the High Court is not the final court in determining matters in dispute as per Article 134(2) of the Constitution and section 10 of the Judicature Act, it would be an injustice to make a decision on a point of law which may eventually be reversed by the Court of Appeal. He prayed court not to proceed to hear the PO or to defer its decision until the decision relating to the ownership of the suit property has been decided by the Court of Appeal.

I have carefully listened to the submissions of Counsel, in addition to addressing the authorities on the matter. I have also read the judgment of Remmy Kasule J, as he then was, in ***Olivia Banyikidde & 2 ors V Swala Brothers & 2 Ors Civil Suit No. 1001 of 2004***. The judgment is to the effect that, among other things, the Plaintiffs are not the owners of the suit property.

In the instant application, Counsel Sebugenyi has intimated to court that the issue he intends to raise as a preliminary point of law is that the Plaintiff has no *locus standi* to bring this suit as he is not the registered proprietor of the suit property. The same position is reflected in paragraphs 4, 5 and 6 of the 1st Defendant's Written Statement of Defence (WSD). It is of importance to note that it is this same suit property that the High Court decision in ***Civil Suit No. 1001 of 2004*** above mentioned has declared not to belong to the Plaintiff, who happens to be the same Plaintiff in the instant case. The Plaintiff has since appealed against the decision to the Court of Appeal. Counsel for the Plaintiff has filed on the court record copies of correspondence to Counsel for the Defendant, copied to the Registrar of this court, dated 31st March 2011 informing them that they have since appealed the decision in ***Civil Suit No. 1001 of 2004***. They have attached a copy of the notice of appeal and a copy of correspondence to the Registrar of the Civil Division of the High Court applying for typed proceedings and the judgment of the said civil suit.

In my opinion, it would lead to multiplicity of proceedings to allow this very matter against which an appeal is pending to be deliberated on by this court, more so, after the pendency of the appeal has been brought to its attention. Section 33 of the Judicature Act, cap 13, empowers this court to grant absolutely, or on such terms as it thinks fit, all such remedies as any of the parties to a cause or matter is entitled to in respect of any legal or equitable claim properly brought before it so that as far as possible all the matters before it are completely and finally determined and all multiplicities of legal proceedings concerning any of those matters avoided.

I would, in that respect, agree with learned Counsel for the Plaintiffs that since the High Court is not the final court in determining matters in dispute as per Article 134(2) of the Constitution and section 10 of the Judicature Act, it would be an injustice to make a decision on a point of law the subject matter of which is a subject of appeal as it may eventually be reversed by the Court of Appeal. Secondly, it may be recollected that this court initially adjourned this matter *sine die* pending determination of the issue regarding the Plaintiff's ownership of the suit property. Though the issue was eventually determined by the High Court, that decision has been appealed against. In principle

therefore, by virtue of the appeal, the issue is yet to be finally resolved. With due respect to the submissions of learned Counsel for the Defendants, this position has nothing to do with staying the disposal of this suit because of an intended appeal, but more to do with avoiding multiplicity and duplicity of suits that could prejudice the interests of parties to the suit.

In the premises, I decline to allow learned Counsel for the Defendants to raise the PO at this point in time that, in any case, is the subject of an appeal in an appellate court. This matter stands adjourned until the appellate court makes a final decision on the ownership of the suit property.

The costs in this matter will abide in the main suit.

Dated at Kampala this 13th day of October 2011.

Percy Night Tuhaise
JUDGE.