

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT FORT PORTAL

MISCELLANEOUS APPLICATION NO. 098 OF 2017

(Arising from L.D Civil Suit No. 017 of 2017 & Kyenjojo L.D Civil Suit No. 012 of 2013)

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ELIZABETH NJUMBA.....APPLICANT

VERSUS

1. NYAKATO IRENE

2. DAVID KIIZA

10 **3. DIANA KATWESIGE**

4. JACKLINE NYAKAISIKI

5. KASELEGENYI JOHN

.....RESPONDENTS

BEFORE: HIS LORDSHIP HON. MR. WILSON MASALU MUSENE

15 **Ruling**

This was an application by Elizabeth Njumba against Nyakato Irene and 4 others. It was brought under **Section 18(1) (b)** and **(2)** of the Civil Procedure Act and **Order 52 Rules 1 & 3** of the Civil Procedure Rules. It is seeking for orders that;

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- a. Land Civil Suit No. 012 of 2013 now pending determination by the Kyenjojo Magistrate’s Court be withdrawn and tried by this Court jointly with Civil Suit No. 0017 of 2017.
 - b. Costs of this application be provided for.

The Application is supported by the affidavit of Kibirango Erastus, but the grounds are;

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- 1. Sometime in 2013 the 1st Respondent did file L.D Civil Suit No. 012 of 2013, in Kyenjojo Court against the Applicant seeking among other reliefs an order of specific

performance compelling the Applicant to execute a transfer in respect of land comprised in Mwenge Block 131 Plot No. 30 at Kyanyama in her favour.

2. By her Written Statement of Defence, the Applicant counter sued the Respondent for detinue and sought among others; an order for the handover of the titles for land comprised in Mwenge Block 131 Plot No. 30 at Kyanyama and Mwenge Block 132 Plot 7 at Ruhoko (the suit land) but that suit is still under hearing of the Plaintiff's case.
3. The 1st Respondent jointly with her Co-Respondents recently filed the main suit against the Respondent who also counter sued them for trespass to the suit land and that suit is also pending determination.
4. Since both suits relate to the same subject matter, same parties and similar questions of law and fact, there is a risk of either Court giving contradictory orders, let alone the promoting of multiplicity of suits.
5. It is in the interests of justice if this application is allowed, the suits tried jointly so that the parties can conveniently and conclusively attain justice.

There was no affidavit in reply on record. The Applicant was represented by M/s Viola Konso, while M/s Angella Bahenzire represented the Respondents.

The Advocates on both sides gave brief oral submissions. Counsel for the Applicant's case was that the two cases, land Civil Suit No. 012 of 2013 now pending at Kyenjojo and H.C.C.S No. 0017 of 2017 be tried jointly, as they relate to the same subject matter. She added that this Court has jurisdiction to make consequential orders of consolidation and avoidance of multiplicity of suits.

M/s Angella Bahenzire in reply urged that the two suits are different and the facts in respect thereof are different. She reiterated that in Kyenjojo, Nyakato Irene sued Elizabeth Njumba to effect a transfer. While in H.C.C.S No. 0017 of 2017 is an Administration cause where Nyakato Irene and 4 others are claiming their benefits under an Estate of 30 acres. The other case in Kyenjojo is in respect of 6 acres.

Section 18(1) (b) of the Civil Procedure Act provides:-

“18 (1) on the application of any of the parties and after notice to the parties and after Notice to the parties and after hearing such of them as they desire to be heard, or on its own motion without such notice, the High Court may at any stage –

(b) Withdraw any suit or other proceeding pending in any Court subordinate to it.”

2) *Where any suit or proceeding has been transferred or withdrawn under Section (1), the Court which there after tries that suit may, subject to any special directions in the case of an order of transfer, either retry it or proceed from the point which it was transferred or*
5 *withdrawn.”*

The wording of the above provisions does not talk about transfer of a case and consolidation. Secondly, the case in Kyenjojo is about an order of specific performance compelling the Defendant, Ms. Elizabeth Njumba to **sign** transfer forms for Nyakato Irene who bought 6 acres of Land from her. And those 6 acres are specific as land comprised in Block 131 Plot
10 30 situate at Kyanyama, Mwenge County. The Plaintiff is already in possession but wants transfer forms signed as per the contract of sale concluded in 1997. High Court Civil Suit No. 17 of 2017 on the other hand is where Nyakato Irene and 4 others are suing Elizabeth Njumba over a Certificate of Title she allegedly unlawfully obtained in respect of 30 acres of land, the Estate of late Yubu Kalyegira. That land is separate and located at 3 villages in
15 Nyantungo Sub-County, Ruhoko Parish, Kyenjojo District.

The two cases are therefore over separate pieces of land located in different Sub-counties. In the case at Fort Portal, parties will bring witnesses in Court, while the case at Kyenjojo is for the Court to interpret the sale agreement and order Elizabeth Njumba **to sign the transfer forms.**

20 The two cases are therefore different over two different parcels of land located in two different sub-counties and so there is no need of trying them together. This application is accordingly hereby rejected. Costs will a bid by the outcome of each case.

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25 **WILSON MASALU MUSENE**

JUDGE

19/12/2018