

**THE REPUBLIC OF UGANDA
IN THE SUPREME COURT OF UGANDA AT KAMPALA
CIVIL REFERENCE NO. 07 OF 2022
(Arising from Civil Application No. 5 of 2022)**

GEOFFREY KATOORO.....APPLICANT

VERSUS

MOSES MACEKENYU IKAGOBYA.....RESPONDENT

**CORAM: HON. LADY JUSTICE ELIZABETH MUSOKE, JSC
HON. MR. JUSTICE STEPHEN MUSOTA, JSC
HON. MR. JUSTICE CHRISTOPHER IZAMA MADRAMA, JSC**

RULING OF THE COURT

This reference is from the decision of Hon. Mr. Justice Mike Chibita, JSC, sitting as a single Justice of the Court, in Civil Application No. 5 of 2022 delivered on 17th February, 2022.

Background

This Court determined Civil Appeal No. 08 of 2014 between the applicant and two others, on the one hand, and the respondent on the other hand, which concerned ownership of a certain piece of land situated in Bunyangabu District. The Court determined that the respondent was the rightful owner of that land. Subsequent to the judgment in Civil Appeal No. 08 of 2014, the applicant and the two others filed Civil Application No. 28 of 2015 seeking clarification of some of the orders granted in Civil Appeal No. 8 of 2014. The Court granted the clarification.

Thereafter, the applicant and the two others filed another Civil Application No. 01 of 2020 seeking further clarification of the orders in Civil Appeal No. 08 of 2014. This Court is yet to give a ruling in Civil Application No. 01 of 2020.

In the meantime, the applicant also filed Civil Application No. 31 of 2020 for an interim order to restrain the respondent from dealing with the suit land pending determination of Civil Application No. 01 of 2020. This application was heard and dismissed by Hon. Mr. Justice Ezekiel Muhanguzi, JSC.

The applicant thereafter also filed Civil Application No. 4 of 2022 seeking a temporary injunction to restrain the respondent from dealing with the land pending determination of Civil Application No. 01 of 2020. He also subsequently filed Civil Application No. 5 of 2022 for an interim order which was heard and dismissed by Hon. Mr. Justice Mike Chibita, JSC. In his ruling, Hon. Mr. Justice Mike Chibita, JSC stated that he could not grant the application because there was no substantive application for a temporary injunction.

Being dissatisfied with the decision of Hon. Mr. Justice Mike Chibita, JSC, the appellant now brings this reference to have the said decision reversed. The sole ground of the applicant's reference is as follows:

"The learned Justice of the Supreme Court erred in law and fact when he held that there was no substantive application for a temporary injunction."

The respondent opposes the reference. He contends that there was no evidence of existence of a substantive application for a temporary injunction placed before Hon. Mr. Justice Mike Chibita, JSC. He further contends that the evidence of existence of the said application that the applicant seeks to adduce on this reference is fresh evidence which has been adduced without leave of Court which is contrary to Rule 52 of the Supreme Court Rules.

Representation

At the hearing, Mr. Ambrose Tebyasa and Mr. Joseph Muhumuza Kaahwa, both learned counsel, appeared for the applicant. Mr. Agaba Kenneth Mugisha, learned counsel, holding brief for Mr. Kyagaba Isaac appeared for the respondent.

Counsel for either side filed written submissions.

Preliminary objections to the reference

Counsel for the respondent raised two preliminary objections to the reference. Firstly, he contended that the reference was filed in contravention of **Rule 52 (2) of the Judicature (Supreme Court Rules) Directions S.I 13-11** which provides as follows:

"At the hearing by three judges of the court of an application previously decided by a single judge, no additional evidence shall be adduced except with the leave of the court."

Counsel submitted that the applicant has, in this reference, adduced additional evidence of Civil Application No. 04 of 2022, a substantive application for a temporary injunction, which evidence was not adduced before the learned Single Justice. For that reason, counsel prayed that the evidence of the said application be struck off the record.

The second preliminary objection raised by counsel is that Civil Application No. 05 of 2022 from which the present reference arises is *res judicata* as it raises similar issues to the ones considered in Civil Application No. 31 of 2020 which has been determined by this Court. The issues relate to granting of injunctive reliefs against the respondent. Counsel relied on **Karia and Another vs. Attorney General and two Others, Supreme Court Civil Appeal No. 20 of 2002 (unreported)** where Tsekooko, JSC summarized the principles on *res judicata* as follows:

"Once a decision has been given by a Court of competent jurisdiction between two persons over the same subject matter, neither of the parties would be allowed to relitigate the issue again or to deny that a decision had in fact been given, subject to certain conditions."

Counsel submitted that the applicant in Civil Application No. 05 of 2022 sought to be granted the injunctive relief that he was denied in Civil Application No. 31 of 2020 and accordingly the former application is *res judicata*.



Applicant's response to the preliminary objections

With respect to the first preliminary objection, counsel for the applicant submitted that evidence of Civil Application No. 4 of 2022, the substantive application for a temporary injunction is not additional evidence. Counsel submitted that the said application is a court record that existed at the time of hearing of the application for the interim order. Counsel submitted that the learned Single Justice ought to have caused a search so as to satisfy himself as to the existence of the said application and that his failure to do so had occasioned a miscarriage of justice.

As for the second preliminary objection that Civil Application No. 5 of 2022 and this reference which arises therefrom are *res judicata* as similar issues were determined in Civil Application No. 31 of 2020, counsel responded that that was not the case as the parties are different and there has never been a reference application by the parties.

Consideration of the preliminary objections

We have carefully considered the two preliminary objections raised by counsel for the respondent and the submissions of counsel for either side regarding the objections. The first objection relates to whether the evidence of Civil Application No. 4 of 2022 which the applicant alludes to in this reference is additional evidence which under Rule 52 (2) of the Rules of this Court may only be adduced with leave of court. Rule 52, in relevant part, provides as follows:

"52. Reference from decision of a single judge.

(1) Where under section 8(2) of the Act, any person who is dissatisfied with the decision of a single judge of the court—

(a) ...

(b) in any civil matter wishes to have any order, direction or decision of a single judge varied, discharged or reversed by the court, the applicant may apply for it informally to the judge at the time when the decision is given or by writing to the registrar within seven days after that date.



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(2) At the hearing by three judges of the court of an application previously decided by a single judge, no additional evidence shall be adduced except with the leave of the court."

Counsel for the respondent submitted that the evidence of Civil Application No. 4 of 2022 is additional evidence, and that since the applicant has not obtained leave of this Court to have it adduced, the evidence should be struck off the record. Counsel for the respondent further submitted that the applicant did not refer to the said application in his affidavit in support of the application for an interim order, and that thus reference to existence of the application in the submissions of counsel for the applicant in this reference is an inappropriate attempt to adduce additional evidence by statement from the bar.

We have considered the applicant's application for an interim injunction wherein he, inter alia, sought for an order that:

"An interim injunction be issued restraining the respondent, his agents, servants, workmen, employees, licencees and any other person from building, constructing, alienating and causing waste and damage onto the suit land until the determination of the main application for a temporary injunction in Supreme Court Miscellaneous Application No.....of 2022."

We also noted that at paragraph 7 of his affidavit in support of the application for the interim order, the applicant alluded to having filed a substantive application for a temporary injunction. It is therefore not true, as alleged by counsel for the respondent, that the applicant did not mention having filed a substantive application for a temporary injunction in his affidavit in support of the application for an interim order.

However, it appears, as it usually is the case, that the applicant filed the two applications for substantive and interim injunction orders at the same time and that whereas he alluded to the application for the substantive temporary injunction in the application for the interim order, he left the number of the application blank presumably because at the time of filing the latter application, both applications had not been allocated numbers by the Court.



We further noted that at the hearing from which this reference arises, the learned Single Justice was informed of existence of Civil Application No. 4 of 2022 being the substantive application from which the application for an interim order arose. The learned Single Justice asked the Court Clerk to verify the existence of the said application of which the Court Clerk stated that there was no copy of the same on record. In his brief ex tempore ruling, the learned Single Justice found that there was absolutely no evidence that a substantive application for a temporary injunction had been filed or served. However, we accept the submission of counsel for the applicant that it would have been safer for the learned Single Justice to investigate the matter further in order to reach a just decision. As it stands, the Court is in this reference faced with evidence that the applicant filed Civil Application No. 04 of 2022 which is a substantive application for a temporary injunction. The Court cannot ignore the existence of the said application as to do so would only cause injustice. For those reasons, we hereby overrule the first preliminary objection.

We now move on to consider the second preliminary objection which is that Civil Application No. 05 of 2022, and Civil Application No. 04 of 2022 from which it arises and by extension this reference, are all *res judicata* as they are concerned with matters that have already been decided by this Court in Civil Application No. 31 of 2020. *Res judicata* is provided for under **Section 7** of the **Civil Procedure Act, Cap. 71** which provides:

"7. Res judicata.

No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try the subsequent suit or the suit in which the issue has been subsequently raised, and has been heard and finally decided by that court."



In **Karia and Another vs. Attorney General and two Others**, Supreme Court Civil Appeal No. 20 of 2002 (unreported), this Court, while interpreting the above provision held:

"The provision indicates that the following broad minimum conditions have to be satisfied:

- (1) There have to be a former suit or issue decided by a competent court.**
- (2) The matter in dispute in the former suit between parties must also be directly or substantially in dispute between the parties in the suit where the doctrine is pleaded as a bar.**
- (3) The parties in the former suit should be the same parties, or parties under whom they or any of them claim, litigating under the same title."**

The Court further observed:

"In HCCS 553 of 1966 (Ismail Karshe Vs Uganda Transport Ltd) cases on Civil Procedures and Evidence, Vol.3 page.1, Sir Udo Udoma, former Chief Justice of Uganda, put it this way: Once a decision has been given by a Court of competent jurisdiction between two persons over the same subject matter, neither of the parties would be allowed to relitigate the issue again or to deny that a decision had in fact been given, subject to certain conditions. In my opinion this is a correct summary of S.7."

The question is whether the conditions for *res judicata* are satisfied in relation to either or both of Civil Applications Nos. 04 and 05 of 2022, on the one hand, and Civil Application No. 31 of 2020, on the other hand. Civil Application No. 31 of 2020 was filed by the applicant and two others for, inter alia, an order that:

"A temporary injunction be issued restraining the respondent his agents, servants, workmen, employees, licencees and any other person from building, constructing, renting out, cultivating thereon any crops, alienating and causing waste and damage onto the suit land until the determination of Supreme Court Civil Application No. 1 of 2020."

It is apparent that Civil Applications Nos. 04 and 05 of 2022 were also filed to obtain a temporary injunction against the respondent pending the determination of the same Supreme Court Civil Application No. 1 of 2020.



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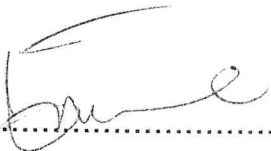


The applicant mentioned as much at paragraph 4 of his affidavit in support of the application for an interim order. It must be noted that the question of whether a temporary injunction should be granted in those circumstances was determined by Hon. Mr. Justice Ezekiel Muhangizi, JSC who answered it in the negative. It is clear that Civil Applications Nos. 4 and 5 of 2022 amount to re-litigating on the same issue that was decided by Hon. Mr. Justice Ezekiel Muhangizi, JSC, and are therefore *res judicata*. We therefore sustain the second preliminary objection against this reference.

In view of the manner of resolution of the second preliminary objection, we find that the present reference arises from Civil Applications Nos. 4 and 5 are barred by law for being *res judicata* and we dismiss it with costs to the respondent.


We so order.

Dated at Kampala this 26th day of April 2023.

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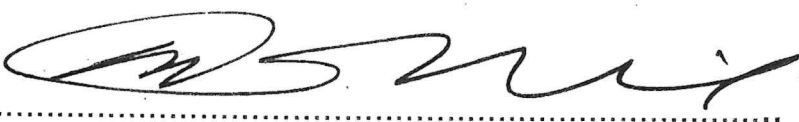
Elizabeth Musoke

Justice of the Supreme Court

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Stephen Musota

Justice of the Supreme Court

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Christopher Izama Madrama

Justice of the Supreme Court

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Dismissed by the Registrar on 26/4/23
