

THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA AT KAMPALA
MISCELLANEOUS APPLICATION NO.247 OF 2016
(ARISING OUT OF CIVIL APPEAL NO.83 OF 2015)

5

PETER LULE=====APPLICANT

VERSUS

1. SHUMUK SPRINGS DEVELOPMENT PROPERTIES LTD
2. SPRINGS INTERNATIONAL HOTEL LIMITED
- 10 3. SHUMUK FINANCIAL SERVICES LIMITED
4. MUKESH SHUKLA
5. BONEY MWEBESA KATATUMBA
6. HOTEL DIPLOMATE LIMITED
7. MRS.GERTRUDE NAMUTEBI KATATUMBA ===== RESPONDENTS

15 **CORAM**

HON. MR. JUSTICE GEOFFREY KIRYABWIRE, JA

HON. LADY JUSTICE MONICA MUGENYI, JA

HON. MR. JUSTICE REMMY KASULE, Ag. JA

RULING OF THE COURT

20 **Introduction**

This is an Application made under Section 10 of the Judicature Act (Cap 13 of the Laws of Uganda) and Rules 2 (2); 33 (1) and (2) and 44 of the Judicature (Court of Appeal Rules) Directions (herein after referred to as the Rules of this Court). The Application sought Orders that:-

- 25 1. The Applicant be added as a party in Civil Appeal Number 083 of 2015 now pending hearing in this Court.



2. Costs be provided for.

Background

The dispute is in respect of property situated at Pot No. 2 Colville Street Kampala comprising of condominium units namely units 54; 55; 56; 57; 58; 59; 60; and 62; all part of Lease Hold Register Volume 3605 (and folios 7; 8; 9; 10; 11; 11; 12; 13 and 14 (herein after referred to as the "suit property").

The dispute led to the parties filing two separate suits at the High Court of Uganda at Kampala namely High Court Civil Suit No. 375 of 2009 before Hon. Mr. Justice C. Madrama (as he then was) and High Court Civil Suit No. 126 of 2009 before Hon. Mr. Justice Peter Adonyo. There were similar names of the parties in the said suits though all names were not similar. The parties in HCCS-0375-2009 were;

- 1. Shumuk Springs Development Ltd
 - 2. Springs International Hotel Ltd
 - 3. Shumuk Financial Services
 - 4. Mukesh Shukla
- =====Plaintiffs
- versus
- 1. Bonney Katatumba
 - 2. Virani Bahadukadi,
 - 3. Joseph Sempebwa,
 - 4. Peter Luke, Tecton Group,
 - 5. Arvind Patel
 - 6. The Registrar of Titles.
- =====Defendants

While civil Suit No.126 of 2009 had the following parties;

- 1. Boney Mwebesa Katatumba,
 - 2. Hotel Diplomate Ltd, Katatumba Properties Limited,
 - 3. Katatumba Properties Limited
 - 4. Mrs. Getrude Namutebi Katatumba
- ===== Plaintiffs
- Versus
- 1. Shumuk Springs International Development Ltd
 - 2. Springs International Development Ltd
 - 3. Shumuk Financial Services
 - 4. Mukesh Shukla
- =====Defendants

[Handwritten signatures and initials]

The name of the parties notwithstanding, the suit property in both suits was the same. It is contended that the two trial Judges were somehow not informed of the two suits in the same Court were in regard to the same suit property. It is the case for the Applicant that he is a creditor to the fifth Respondent Mr. Bonney Katatumba (RIP) and that the first to fourth Respondents should make good that debt. High Court Civil Suit No. 126 of 2009 was completed and an Appeal preferred to this Court (Civil Appeal No. 083 of 2015). On the other hand however, the Court in High Court Civil Suit No. 375 of 2009 had the main suit dismissed in favour of the present Applicant and the counter claim was allowed to proceed.

It was at this late stage that the trial Judge in High Court Civil Suit No. 375 of 2009 learnt of the Appeal in this Court and stayed his proceedings in favour of this Appeal being heard and determined as the subject matter was the same.

It is the prayer of the Applicant that in the interest of justice this Court grants this Application allowing the Applicant to join the main Appeal such that the Applicant is afforded an opportunity to be heard in light of the Decree in High Court Civil Suit No. 126 of 2009.

Representations

Ms. Sarah Kisubi appeared for the Applicant while Mr. Kibuuka Musoke appeared for the first to fourth Respondents; Dr. Benson Tusasirwe and Mr. Joseph Kyazze appeared for the fifth and sixth Respondents; and Mr. Jonathan Abaine Buregyeya appeared for the eighth Respondent.

The case for the Applicant.

Counsel for the Applicant submitted that the Applicant was not a party to High Court Civil Suit No. 126 of 2009 which was determined and now on Appeal before this Court.

She argued that though the suit property was the same and some of the parties were common to both suits, the two trial Judges who were in the same Court were not made aware of this fact; so no consolidation of suits took place.



She further argued that if the Applicant continued with the counter claim in High Court Civil Suit No. 375 of 2009 there was a danger of “losing out” on the suit property if they did not keep track of the Appeal now pending before us.

5 Counsel submitted that a possible alternative would be to stay the Appeal before us and allow the proceedings at the High Court to be concluded and then any party who is dissatisfied with the High court decision could then Appeal and both Appeals thereafter be consolidated for a better management.

10 When asked by Court whether counsel for the Applicant would be inclined to withdraw this Application in favour of the pending matter at the High Court being completed, she submitted she may consider this proposal provided costs were not awarded against her client.

The case for the fifth to seventh Respondents.

15 Counsel for the fifth to seventh Respondents complained that they had not been served with the present Application and argued that it appeared that a “stranger” to the dispute was trying to join the main Appeal. He however conceded that he was aware of the Applicant and that the Applicant had matters pending at the High Court. He could not recall the position of the pending High Court matters. He submitted that when he got to know of the similarities between High Court Civil Suit No. 126 of 2009 and High Court Civil Suit No. 375 of 2009, he applied to
20 strike out High Court Civil Suit No 375 of 2009 which was done. However, it then transpired that there still remained a counter claim by the Applicant which has not been determined.

25 Counsel further submitted that in principle his clients do not contest the ownership of some of the units at the suit property. He however feared the procedure used by the Applicant to join the main Appeal as there was a real possibility that it would cause delay in the main Appeal; yet his clients wanted it concluded.

30 He however submitted that it would be better for the pending matter at the High Court to be concluded so that a dissatisfied party then appeals to this Court and then both Appeals on the suit property be consolidated.

The Case for the first to fourth Respondents.

Counsel for the first to fourth Respondents conceded that the counter claim in High Court Civil Suit No. 375 of 2009 was stayed by the trial Judge. He recalled that there was an Application to consolidate the two suits at the High Court but
5 could not recall what happened to it.

He however objected to the Application for the Applicant to be joined to the main Appeal as the matters dealt with in both cases at the High Court were different.

The case for the eighth Respondent.

Counsel for the eighth Respondent submitted that in his view the pending
10 counter claim in High Court Civil Suit No. 375 of 2009 should be disposed of first as its outcome would have a bearing on the outcome in this Appeal. He argued that all the issues in this dispute need to be resolved once and for all.

Decision of this Court.

We had the benefit of hearing the arguments of all counsel for which we are
15 grateful.

We have already given an ex tempore Ruling in this matter setting aside the stay by the trial Judge in the counter claim in High Court Civil Suit No. 375 of 2009 with a view that that the hearing of that suit proceeds and be completed within three months and that this Appeal be stayed pending any resultant Appeal therefrom
20 with a view to consolidation at the Court of Appeal. We stated that we shall give our detailed Ruling on notice which we now proceed to do.

This is a very old dispute which first came to the Courts nearly twelve years ago involving a fairly well know suit property in Kampala. Evidently the dispute before the courts involving the suit property has been protracted and it is now evident
25 that some of the parties are concerned about the protracted delay caused by the two suits at the High Court namely High Court Civil Suit No. 126 of 2009 and High Court Civil Suit No. 375 of 2009 both filed in the same Court (Commercial Court Division) in the same year but before different Judges.



Handwritten signature and initials in the bottom right corner of the page.

The Judicature Act provides how the High Court should deal with disputes among parties and how to manage the grant of remedies. Section 33 of the Judicature Act provides that: -

5 *“The High Court shall, in the exercise of the jurisdiction vested in it by the Constitution, this Act or any written law, grant absolutely or on such terms and conditions as it thinks just, 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 matters in controversy between the parties may be completely and finally determined and*
10 *all multiplicities of legal proceedings concerning any of those matters avoided...”*

The mischief here is to avoid “all multiplicities of legal proceedings concerning any of those matters”. Section 33 of the Judicature Act is therefore a case management tool which points to efficient and effective court utilization. The main focus here is ensuring justice by making sure that all remedies whether legal
15 or equitable and all matters that are in controversy are completely and finally determined. Failure to abide by Section 33 of the Judicature Act can itself be an abuse of Court process.

Rule 2 (2) of the Rules of this Court provides that:-

“
20 *Nothing in these Rules shall be taken to limit or otherwise affect the inherent power of the court, or the High Court, to make such orders as may be necessary for attaining the ends of justice or to prevent abuse of the process of any such court, and that power shall extend to setting aside judgments which have been proved null and void after they have*
25 *been passed, and shall be exercised to prevent abuse of the process of any court caused by delay..”*

It is therefore equally a command on this Court to ensure the ends of justice are attained and that abuse of court process is prevented.

We are inclined to find that the presence of two suits namely High Court Civil Suit
30 No. 126 of 2009 and High Court Civil Suit No. 375 of 2009 on the same subject



matter is indicative of a multiplicity of legal proceedings. It is also evident to us that the resolution of these two suits at the High Court level has the potential of piece meal determination of remedies so that the controversies are not all completely and finally determined. This is because now as it is, High Court Civil Suit No 126 of 2009 is on Appeal before us while the counterclaim in High Court Civil Suit No. 375 of 2009 is still pending at the High Court.

At page 166 of the present Motion Judge Christopher Madrama Izama Ruled: -

10 *"... The Judgment in HCCS 126 of 2009 affects the question of ownership of the Condominium Units claimed by the Counterclaimant. The counterclaimant is not a party to the Judgment or suit in HCCS 126 of 2009. It is an agreed fact that the matter is before the court of appeal. In effect the counterclaim has not been heard before the decision in HCCS 126 of 2009 was made because he was not a party. A decision of the court of appeal in the matter **would further complicate enforcement and hearing of this suit.** In the premises the prudent course is to stay proceedings in this suit to enable the counterclaimant Mr. Peter Lule join the appeal from the decision of HCCS No. 126 of 2009 so that the appellate court decides the fate of all parties to avoid a multiplicity of suits and any conflicting orders or decrees. There are **common questions of fact and law between the parties over the same subject matter.** In the premise proceedings in this suit are*
15 *stayed pending further steps to be taken on appeal..."* (emphasis ours).
20

Clearly the trial Judge was alive to the Application of Section 33 of the Judicature Act and tried to mitigate the situation before him by staying the suit in his Court.

We have examined these files and agree that we need to manage the suits in this dispute which like the trial Judge we find have common questions of fact and law
25 between the parties over the same subject matter. Our only point of departure is that all matters should first be resolved at the trial Courts before we hear them on Appeal after all that is what should have happened in the first place through the process of consolidation.

Consequently, we invoke our inherent powers under Rule 2 (2) of the Rules of this
30 Court to: -



1. Stay the proceedings in court of Appeal Civil Appeal No.83 of 2015 before this Court until the counterclaim in High Court Civil Suit No. 375 of 2009 is disposed of.
2. Direct that the counterclaim in High Court Civil Suit No. 375 of 2009 be expeditiously handled and in any event within a period of 3 months from date of this Ruling.
3. Direct that the parties cooperate to achieve the above objective and if there is any dissatisfied party in the counterclaim in High Court Civil Suit No. 375 of 2009, that that party is free to Appeal that decision in the normal way whereupon it will be consolidated with the main civil Appeal in this matter.
4. Order that since it is in the best interests of all the parties to resolve this dispute completely have it finally determined and avoid all multiplicities of legal proceedings, that each party bear their own costs of this Application.

We so Order.

Dated at Kampala this 1st day of April 2021



HON. MR. JUSTICE GEOFFREY KIRYABWIRE, JA



HON. LADY JUSTICE MONICA MUGENYI, JA



HON. MR. JUSTICE REMMY KASULE, Ag. JA

