

THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA  
(LAND DIVISION)  
MISCELLANEOUS APPLICATION NO.797 OF 2021  
ARISING OUT OF CIVIL SUIT NO.951 OF 2020

LUYANZI ACADEMIC FOUNDATION LTD -----  
APPLICANT

VERSUS

KAAHWA AMOOTI ----- RESPONDENT

**RULING BEFORE AG. HON. LADY JUSTICE SUSAN KANYANGE**

This was an Application for orders that,

- i. The Plaintiff in Civil Suit No.951 of 2020, Kaahwa Erisa Amooti Versus Luyanzi Academic Foundation Ltd & Another be struck out rejected for being barred by law.
- ii. The Plaintiff be struck out for not disclosing a cause of action against the 2<sup>nd</sup> Applicant.
- iii. Costs of the Application be provided for.

The Application was supported with the Affidavit of Engineer Ayub Sooma but briefly the grounds are,

That the Respondent filed Civil Suit No.981 of 2020 in which he alleges that he was wrongfully evicted from part of the property comprised in Block No.260 Plot No.44 land at Bweyogerere, which he owns and seeks to have the Applicants evicted thereon.

The said land in issue previously belonged to Progressive Secondary school which was operated by the Respondent. 1<sup>st</sup> Applicant purchased it from Barclays Bank of Uganda Limited as mortgagee, upon default by Progressive Group of schools Ltd from servicing their loan. The Respondents had earlier sued bank and 1st Applicant in Commercial Court and lost the suit.

That the suit is barred by section 6 of the Civil Procedure Act as the matters in issue in the suit were directly and substantially in issue in Civil Suit No.204 of 2008, Progressive Group of schools Limited & Others versus Barclays Bank of Uganda Limited and Luyanzi Academic Foundation Ltd, which was dismissed.

That also the Plaintiff discloses no reasonable cause of action as against the 2<sup>nd</sup> Applicant, as Director of 1st Applicant who was neither the purchaser of the plots in (ii) above and neither is he in possession of the property.

That the Plaintiff who is the principal shareholder and Director in Progressive Group of schools Ltd as well as Ab'amooti Investments Ltd in abuse of Court process also filed in High Court Nakawa Civil Suit No.186 of 2009 Ab'amooti Investments Ltd VS Barclays Bank of Uganda Ltd and Progressive Group of schools Ltd against the Bank and the Progressive Group of schools.

The Respondent in this application was served but did not file a reply and neither did he appear in Court. The matter thus proceeded exparte.

The Applicants filed submissions which I will not reproduce but will consider them in my decision.

### **Resolution.**

The Applicants raised two issues for Court to resolve in order to strike out the plaint.

1. Whether the suit is res judicata

2. Whether the suit should be rejected for failure to disclose a cause of action against the 2<sup>nd</sup> Applicant

First whether the suit is res judicata.

**Section 7 of the Civil Procedure Act** provides that no Court shall try any suit or issue in which the matter directly and substantially in issue in a former suit between the parties or between persons 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 the case of **Daniel Sempa Mbabali versus Kizza and Administrator General – 1992 – 1993 HCS** it was held that the decision must be a final one, the matter must have been distinctly put in issue and then only the precise point which was so put in issue and solemnly found against a party is deemed to have been finally decided.

See also case of **General Industries U Ltd versus Non Performing Assets Recovery Civil Appeal 51 Of 2007(2019)**. **John William Kihuka & Others versus Personal Representative of Rt. Rev. Eric Sabiti – 1995; KALR pg 79 & Lt. David Kabareebe versus May Prossy Nalweyiso CA. No.34 of 2002.**

But the plea of being one of restraint of the right of a litigant to have his case fully tried and determined, the plea must clearly be established and the judgment which is pleaded in above strictly construed and plea of res judicata must be raised by pleadings and the other side must have an opportunity of putting inside his contention. See case of **Farook Aziz (Administrator of Estate of Late Salima Kabasungu) versus Abdalla Abdu Maruke; SCCA No.4 of 2022.**

The Respondent was served but did not appear to defend the Application so I will look at the pleadings and the judgment and see if the Plaintiff/Respondent in this Application is trying in the second suit to bring before the Court in another way in the form of a new cause of action, a transaction which has already been presented before a Court earlier of competent jurisdiction, in proceedings which have been adjudicated upon.

In HCCS No.204 of 2009 at Commercial Court the Plaintiffs, Progressive Group of schools Limited, Ab'omooti, Investments Limited and Kaahwa Erisa Amooti, sued the Defendants Barclays Bank of Uganda Limited and Lyanzi Academic Foundation Limited for a declaration, that the purported sale and transfer of the Plaintiff's securities is illegal and unlawful, and in contravention of the loan agreement. They also sued for recovery of the securities mortgaged and cancellation of the transfer, recovery of bank account records, cheque books, files, school records, certificates, furniture, computers, general use assets and money remaining on the account. The Plaintiffs also sought an account to be taken together with all necessary inquiries and directions of all financial transactions on the bank account No.031194075, compensatory general and exemplary damages, interest, and costs of the suit.

The suit was dismissed by Hon. Justice David Wangutusi and he found that the sale of the properties to 2<sup>nd</sup> Defendant were for repayment of the Plaintiff's indebtedness to the 1<sup>st</sup> Defendant, and it was not proved that the value of the mortgaged properties was higher than what the 1<sup>st</sup> Defendant obtained in the sale of the property to the second Defendant.

In Nakawa Court Suit No.186 of 2009 Ab'amooti Investments Uganda Limited versus Barclays Bank of Uganda Ltd, Progressive Secondary school. the Plaintiff prayed for the following orders,

1. That a declaration issues that the mortgage agreement between the Defendants in respect of land comprised in Block No.226 Plots 43, 72 and 89 is null and void for being ultravires the objects of the Plaintiffs.
2. The Resolution authorizing the grant of power of Attorney to Progressive secondary school to use the aforesaid land to borrow money from the first Defendant is null and void.
3. A declaration that the power of Attorney which was granted to the second Defendant to borrow money from the first Defendant is null and void, cancellation of all transactions following from the said power of Attorney (d) permanent injunction.

In Land Division Civil Suit No.951 of 2020 Kaahwa Erisa Amooti versus Luyanzi Academic Foundation Limited and Sooma Ayub, from which this application arises, the Plaintiff seeks declaration that:-

- a. He is the rightful owner of the suit land Block No.226 Plot No.44 land at Bweyogerere measuring 1 acre developed with a building and wall fence and gate.
- b. That the Defendants are not entitled to enter occupy or use the said land,
- c. An order of eviction.
- d. Vacant possession,
- e. Permanent injunction.

When I analyse the above cases, I find that, the Applicants in present application, were not parties to the Nakawa case as its Ab'mooti investments U Ltd vs Barclays Bank of Uganda Ltd and Progressive Secondary School. The judgment in that suit has not been availed. The prayers therein do not solve any matter with the present

applicants so it does not fall within the meaning of res judicata as I discussed before.

In relation to the present claim, as submitted by counsel, its brought by the Respondent, the 3<sup>rd</sup> plaintiff in commercial court Cs no 204 of 2008. The 2<sup>nd</sup> defendant in the commercial case is the 1<sup>st</sup> Applicant here and 1<sup>st</sup> defendant.

Justice Wangutusi's Judgment ,on page 5 ,he wrote 'The prayers sought include.....cancellation of the transfers for properties comprised in Block 226 plots 43,72 and 89 Kyadondo ,Block 227 plot 966,1424 Kyadondo. Page 8 also lists other properties on which legal mortgage was created like plot 266 Block 226 Kyadondo, plot 756 Block 227 kyadondo. These were the plots litigated upon in the commercial court.

The present claim is part of Block 266 plot 44 land at Bweyogerere. This description of land does not appear in the commercial court case and the issues pertaining to it have not yet been resolved. Since the subject matter is different. I thereby find that the matter is not res judicata.

2. Whether there is a cause of action against the 2<sup>nd</sup> Applicant.

Cause of action has been held to mean every fact which is material to be proved to entitle the Plaintiff to succeed. Every fact which the Defendant would have a right to traverse. See case of **Uganda Aluminium versus Restetuta Twinomugisha CACA No.22 of 2000.and Wabwire versus Kazoora CS187 of 2017.**

According to the leading case of **Auto Garage versus Motokov** there are three essentials to support or sustain a cause of action.

- i. The Plaintiff enjoyed a right

- ii. The right has been violated
- iii. The Defendant is liable

These elements were also discussed in case of **Wanumi and anor versus Nzirejje and 2 others CS 574 of 2020.**

In the Application the 2<sup>nd</sup> Applicant averred that plaintiff discloses no reasonable cause of action against him as he was neither the purchaser of the plots in 4(b) above nor is he in possession of the suit property. His Counsel also submitted that the photographs attached to the plaint indicate Luyanzi College and it is not stated that the 2<sup>nd</sup> Applicant resides on property.

In the plaint in present claim, the Plaintiff averred that the 1<sup>st</sup> Defendant is a limited liability company registered in Uganda. The 2<sup>nd</sup> Defendant is a male adult and a Director in the Defendant Company. The claim is against the Defendants jointly for declarations among others that the Defendants are not entitled to enter, occupy or use the suit property.

From the foregoing both defendants are alleged to have violated the rights of the plaintiff. Also the fact that 1<sup>st</sup> defendant is a limited liability company and 2<sup>nd</sup> defendant is a director in it, his presence is necessary to determine the issue at hand.

In conclusion I find that the suit is not res judicata and the plaint establishes a cause of action against the 2<sup>nd</sup> defendant. Application is hereby dismissed. Costs in the cause.

DATED AT KAMPALA THIS 22<sup>nd</sup> DAY OF Sept 2022.

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KANYANGE SUSAN

AG. HON LADY JUDGE LAND DIVISION.