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**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT JINJA**

MISC APPLICATION No 518 of 2016
*(Arising From Jinja Chief Magistrates Civil Suit No. 128 of 2015,
Civil Suit No 181 of 2014 and civil Suit No. 182 of 2014)*

**1. KAGONGO CHARLES
2. SHABAN BALIGEYA
3. MPANJA RUTH** ===== **APPLICANTS**

Versus

BLUE ROCK INVESTMENTS LTD ===== **RESPONDENT**

BEFORE: HON. JUSTICE MICHAEL ELUBU

RULING

This is an application brought by Notice of Motion under Section 18 of **The Civil Procedure Act**, Section 33 of **The Judicature Act** and Order 52 r 1 of the **Civil Procedure Rules**. The applicants are Kagongo Charles, Shaban Baligeya and Mpanja Ruth while the respondent is Blue Rock Investments Ltd. The applicants seek orders that:

1. Hearing of the three civil suits in the Chief Magistrates Court of Jinja be stayed pending the hearing and final disposal of Jinja HCCS No 189 of 2016.
2. That costs of the application be in the cause.

The grounds of the application are that the suits all stem from the same subject matter namely Plots 46/48 Oboja Road. That the respondent had sued the applicants for rent arrears in the magistrates court while the applicants filed a suit against the respondent in the High Court for the fraudulent acquisition of the suit property; that the suit filed in the High Court would resolve all matters in contention between the parties and would avoid a multiplicity of suits and cut down costs of litigation.

In the affidavit of Mpanja Ruth and Kagongo Charles deposed in support the application, it is averred that the respondent fraudulently acquired the suit property for which the applicants are in possession. That the respondent was sued for fraudulent acquisition of the property. That the suits before the magistrate's court be stayed and hearing proceed with the High Court Civil Suit No 189 of 2016 to avoid contradictions in decisions. That as all issues in contention between the parties in both courts are the same, it would be prudent to proceed only with the High Court civil suit.

The respondent opposes the application and through an affidavit sworn by Joseph Muvawala, states that the applicants were sued in the chief magistrate's court for rental arrears in a court of competent jurisdiction (the chief magistrate's court). That it would be unfair to stop the suits before that court as the same are pending judgement in which case the balance of convenience is in favour of the respondent.

From the pleadings, the general background to this matter is that the applicants occupy Plot 46/48 Oboja Road in Jinja. The three head suits in the Chief Magistrates Court were filed by the respondent for the recovery of rent and vacant possession of the suit land. Each applicant was sued separately. The civil Suits by the respondent were filed on the 11th of December 2014. Certified proceedings in two of the matters are attached. CS No 181 2014 was last adjourned on the 30 of November 2016 to

the 21st of December 2016 because the defendant did not have her file. Then CS No 182 of 2014 was adjourned to the 13th of January 2017 because the plaintiffs had not served the defendant with the hearing notice for the 6th of December 2016. There are no proceedings for the third file.

Then the applicants, on the 25th of October 2016, filed Civil Suit No 189 of 2016 in the High Court of Jinja. There are several prayers made in the High Court including that the suit land had never been repossessed by its former owners and is therefore 'no mans land'; that the respondents fraudulently secured registration of the land and the certificate of title should therefore be nullified.

It was against this background that this application to stay hearing in the magistrate's court was made.

Turning now to the merits, the law under Section 18 of **the Civil Procedure Act** gives the High Court the mandate to transfer any suit that is pending before a subordinate court to itself for disposal.

The general position when court are applying the above provision, they are guided by the following principals as stated in the Case of *KAGENYI vs MISIRAMO & OTHERS (1968) EA 43*

“... that the onus is upon the party applying for the case to be transferred from one court to another for trial to make out a strong case to the satisfaction of the court that the application ought to be granted..... the matters to be taken into account are balance of convenience, questions of expenses, interest of justice and possibilities of undue hardship... if the court is left in doubt as to whether under all circumstances it is proper to order a transfer, the application must be refused.”

The other law cited by the applicants is Section 33 of **the Judicature Act**, which provides for remedies, empowers the High Court, subject to the law, to grant such remedies so that as far as possible all matters in controversy between the parties may be completely and finally determined and all multiplicities of legal proceedings concerning any of those matters avoided.

It is the submission of the respondent that the circumstances of the case are in favour of the matter remaining before the chief magistrate for completion. Firstly that the applicants only aim to delay the proceedings by applying for the transfer yet it is a well-established tenet of human rights and the law that a litigant is entitled to expeditious justice.

From a thorough examination of the antecedents of this application, and by an examination of the pleadings both in the High Court and those before the Magistrate's Court, the matter appears to be a wrangle about disputed property rights. In the cases before the magistrate's court the defendants challenge the ownership of the plaintiffs while the plaintiffs on the other hand demand payment of rent arrears.

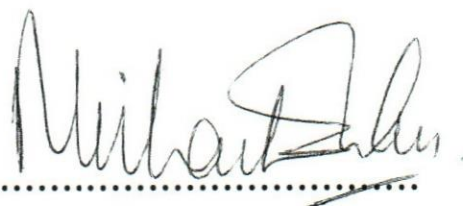
A perusal of the certified proceedings as shown above, also makes it clear that it is not true that the matters were very advanced.

In my view the High Court is best placed to finally determine all the matters in controversy between the parties, particularly the ownership of the suit property. That would also avoid having the multiplicity of suits as it stands now. In the interest of the justice, this dispute should for those reasons be resolved once and for all by the High Court.

In the result, it is the order of this court that the suits before the Magistrate's Court are stayed pending the resolution of High Court Civil Suit No 189 of 2016.

This application therefore succeeds. The costs shall be in the cause.

Dated at Jinja this 3rd day of August 2018

A handwritten signature in black ink, appearing to read "Michael Elubu", written over a horizontal dotted line.

Michael Elubu

Judge