

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(FAMILY DIVISION)

MISC. APPLN NO. 351 OF 2019

(ARISING FROM HCCS NO. 30 OF 2017)

LUYIMBAZI SAUL MUBIRU ===== APPLICANTS

VERSUS

1. MUKASA BENON

2. NSUBUGA ISAAC

3. MUSOKE ALEX

4. MUSOKE LULE

===== RESPONDENTS

BEFORE: JUSTICE GODFREY NAMUNDI

RULING

This is an Application by a Chamber Summons under **Order 11 Rules 1, 2 & 3, Section 98& 64 (e)** of the **Civil Procedure Act Cap 71** and **Section 33 Judicature Act Cap 13** of the Civil Procedure Rules **SI- 71-1** seeking the following orders.

1. HCCS NO. 30 of 2017 Mukasa Benon & 3 others Versus Luyimbazi Saulo Mubiru and HCCS No. 268 of 2015 Mukasa Benon & 3 others Versus Luyimbazi Saul be consolidated as one suit.
2. The costs of the Application be provided for.

The Application was supported by the affidavit of the Applicant which has the the following grounds:

- a) Both HCCS NO. 30 of 2017(Family Division) Mukasa Benon & 3 others Versus Luyimbazi Saulo Mubiru and HCCS No. 268 of 2015(Land Division) Mukasa Benon & 3 others Versus Luyimbazi Saul are pending in the same court.
- b) That both suits involve the same or similar questions of law or facts
- c) If the consolidation is not done, the Honourable Court is bound to give two conflicting decisions in respect of the same subject matter.
- d) The consolidation is intended to avoid multiplicity of proceedings over the same subject matter.
- e) It is fair, just and equitable that this court grants this application.

Counsel filed written submissions which I have considered in reaching this decision.

Decision of court

Order 11 rule 1 under which the application was brought provides that:-

Where two or more suits are pending in the same court in which the same or similar questions of law or fact are involved, the court may, either upon the application of one of the parties or on its own motion, at its discretion, and upon such terms, as may seem fit—

(a) Order a consolidation of those suits; and (b) direct that further proceedings in any of the suits be stayed until further orders.

I have carefully read the pleadings of both suits and the attachments thereto.

The cause of action against the defendant in HCCS No. 268 of 2015 (Land Division) Mukasa Benon & 3 others Versus Luyimbazi Saul is for trespass to land comprised in Busiro Block 489 Plot 18 situate at Sanda kasuku whereas that of HCCS NO. 30 of 2017 (Family Division) Mukasa Benon & 3 others Versus Luyimbazi Saulo Mubiru is for revocation or annulment of the grant of Letters of Administration granted to the defendant Vide Administration Cause No. 291 of 2016.

In my view the causes of action in the two matters are different although they are between the same parties.

The cause in action in HCCS NO. 30 of 2017 (Family Division) appears to be latter in time because the letters in question were granted in 2016. In the interest of justice it's prudent to first determine the matter for Revocation or annulment of letters of administration.

HCCS No. 268 of 2015 (Land Division) Mukasa Benon & 3 others Versus Luyimbazi Saul shall be stayed until the final determination of the HCCS NO. 30 of 2017 (Family Division) Mukasa Benon & 3 others Versus Luyimbazi Saulo Mubiru.

Costs shall be in the cause

GODFREY NAMUNDI
JUDGE
DATE: 03-07-2020