

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT JINJA
LAND CIVIL SUIT NO. 101 OF 2017**

1. AISHA NAMULAWA
2. MUZAMIRU MULAWA
3. FARIDAH NAMULAWA :::::::::::::::::::::::::::::: APPLICANTS
4. FAZIRA NAMULAWA

VERSUS

1. MULAWA ALIMANSI
2. MULAWA ERIAS
3. MULAWA ASUMAN :::::::::::::::::::::::::::::: RESPONDENTS
4. MULAWA AMISI
5. MULAWA HUSSEIN TENYWA
6. WAISWA MULAWA HASSAN
7. MULAWA SALIM
8. MULAWA BAKALI
9. ADIDWA ABDU
10. WANDIRA IBRAHIM MUNULO

BEFORE: JUSTICE MICHAEL ELUBU

RULING

The four applicants filed a Chamber summons seeking orders that:

1. An order doth issue consolidating Land suit No.101 of 2017 and Land Suit No.87/2017.
2. Costs be provided for:

There are 10 respondents.

The grounds for the application are set out in the Chamber Summons and particularised in the accompanying affidavit of AISHA NAMULAWA.

The background to this application is that the applicants and the first seven Respondents are siblings and children of Late Swaibu Mulawa. The subject matter is land comprised in LRV 1058, Folio 9, Plot 22A, Ngobi Road in Iganga Municipality.

At some point, the 9th Respondent bought the suit land from respondents number 1-8. Then some of the Respondents sold the very same property to the 10th Respondent.

As a consequence the 9th Respondent filed Civil Suit No. 87 of 2017. He sued Respondents 1-8 and 10 here. The applicants here also filed Civil Suit No. 101/2017 against the Respondents. Their claim is that the sale of the suit property to either the 9th or 10th Respondent was fraudulent and unlawful and should be cancelled.

It is these two suits that this application seeks to consolidate.

At the commencement of the hearing the 1st, 2nd, 3rd, 4th, 7th and 10th applicants informed the court that they do not oppose this application and did not in fact file affidavits in reply.

The 5th, 6th and 8th Respondents oppose this application and chose to represent themselves.

The 9th Respondent is represented and also opposes this application.

It was also pointed out to this court, that in their Written Statements of Defence, filed in the head suit, the 5th, 6th, 8th and 9th Respondents all stated that they would pray that the head suit (C.S. No. 101/2017) had several issues linked to C.S. No. 87/2017. That they would pray that the two cases are consolidated and determined at once to avoid a multiplicity of suits.

At this point the court withdrew to determine this application based on the pleadings and without hearing the parties.

Consolidation of suits is provided for by Order 11 of **The Civil Procedure Rules S.1 71-3**. It provides that if suits are pending in the same court in which the same or similar questions of law or facts are involved or the rights to relief arise from the same transaction or series of transactions, the court may on application or on its own motion order consolidation of those suits.

In this instant case the dispute in both matters arises from the sale of the suit property and the questions of law for determination are similar.

The four parties that oppose the application namely the 5th, 6th, 8th and 9th respondents have in their written statements of defence confirmed this and state they intended to move court to have the suits consolidated.

The Supreme Court held in **Interfriight Forwarders (U) Limited vs East African Development Bank S.C.C.A No.33/1992** that a party must be bound by his pleadings and will not be allowed at trial to set up a case inconsistent with what he alleged in his pleadings except by way of amendment of the pleadings. The system of pleadings operates to define and deliver with clarity and precision the real matters in controversy between the parties upon which they can prepare and present their respective cases and upon which the court will be called upon to adjudicate between them.

In general terms also, under S.33 of **The Judicature Act Cap 13**, the High Court may grant remedies that as far as possible determine matters in controversy between the parties completely and finally and avoid all multiplicity of legal proceedings concerning those matters.

In sum, this court has examined all the pleadings in this matter. The issues in controversy in C.S No.87/2017 and 101/2017 are similar and arise out of the sale of LRV 1058 Folio 9, Plot 22A, Ngobi Road.

It is clear that realising this, respondents No. 5, 6, 8 and 9, in their written statements of Defence, informed court that they would be seeking orders to consolidate these suits. The law is that a party is bound by its pleadings and will

not ordinarily be allowed to depart from them except by way of amendment. That position holds here. I find that these four Respondents are bound by the statements in their pleadings. It is clear that they had stated that an interlocutory proceeding to seek consolidation would be pursued.

This court therefore orders that C.S 101/2017 and 87 of 2017 be and are hereby consolidated. It serves the justice of the case and will avoid a multiplicity of suits arising from the same transaction and for which similar questions of law and fact arise.

The application succeeds with costs.



MICHAEL ELUBU

JUDGE

5/12/2018