

**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT KAMPALA  
(CIVIL DIVISION)  
MISCELLANEOUS APPLICATION NO. HCT-00-CV-MA-0235- 2022  
(Arising out of High Court Civil Suit No. 0094 of 2022 (ECCMIS))**

- 1. NABIRONGO FARIDAH**
- 2. SERWE DERRICK      T/A DESERT OASIS ::::::::::::::::::::::::::::::::::: APPLICANTS**

**VERSUS**

**MUNGU ACEL ROBERT NANSIO ::::::::::::::::::::::::::::::::::: RESPONDENT**

**BEFORE: HON. JUSTICE SSEKAANA MUSA**

**RULING**

The applicants brought under Order 6 rule 2, 3, 28, 29 & 30, Order 7 rule 11 CPR SI 71 -1 as amended, Section 33 Judicature Act Cap 13, Section 98 Civil Procedure Act Cap 71, and Order 52 rule 1 CPR SI 71 – 1 as amended of the Civil Procedure Rules SI 71 – 1 for;

- a) A declaration that the Respondent's/Plaintiff's pleadings and claims HCCS No. 0094 of 2022 are incompetent for lack of jurisdiction by this honourable court;*
- b) A declaration that the Respondent's/Plaintiff's pleadings and claims in HCCS No. 0094 of 2022 fail to raise any reasonable causes of action jointly and severally against the Applicants/Defendants and are devoid of any merit.*
- c) An order striking out the pleadings, and or, dismissing the suit, in HCCS No. 0094 OF 2022 with costs to the Applicant;*
- d) The costs of this application be provided for.*

The grounds in support of this application were stated briefly in the notice of motion and in the affidavit in support of the Application deposed by Serwe Derrick but generally and briefly stated that;

1. The Respondent herein, instituted **High Court Civil Suit No. 0094 of 2022** in the High Court- Civil Division, principally bringing his claims thereunder as a tenant of the Applicants arising from a tenancy agreement between the Applicants and the Respondent;
2. Under the said suit, the Respondent principally seeks for inter-alia, a declaration that the Applicants/Defendants jointly are in breach of the tenancy agreement with the Respondent/Plaintiff and a declaration that the Applicant's/Defendant's actions of entering the demised premises and forcefully taking over the operations of the Respondent/Plaintiff before the expiry of the tenancy period amounted to trespass and are illegal;
3. The Applicants, jointly and severally, contend that **the pleadings in HCCS No. 0094 of 2022 do not disclose any reasonable cause of action jointly and/or severally** against them, on account that;
  - (a) The foundation and or core basis of the Respondent's claim under the suit is an admission by the Respondents of having occupied the demised premises in default of payment of rent for a period of over three (3) months since December 2021.
  - (b) The activities of the Respondents on the demised premises contravene clear provisions of the tenancy agreement entered into between the Applicants and the Respondent, which cannot form the basis of a valid and tenable claim at law, or be condoned by a court of law.
4. The Applicants, jointly and or severally, contend that HCCS No. 0094 of 2022 is incompetent in as far as it was filed in a wrong division of the High Court;
5. The said suit is misconceived, frivolous and vexatious instituted by a defaulting tenant who in their pleadings, admitted that they are three (3) months in rent arrears;

6. That the Respondents are in physical possession of the demised property and therefore instituting this suit before this honourable court is a flagrant abuse of court process;
7. This application is made to save courts time in resolving all preliminary points of law which arise from HCCS No. 0094 of 2022 before determining the merits therein;

The Respondent filed an affidavit in reply and it briefly stated as follows;

1. That I'm a male adult Ugandan of sound mind the Respondent herein well versed with the facts in this affidavit in that capacity.
2. That I have been advised by my above mentioned lawyers which advise I verily believe to be true that the application is misconceived, bad in law and they should be dismissed with costs.
3. That in reply to paragraphs 2 and 3 of their affidavit in support, my claim against the Applicants herein is of breach of contract, recovery of 177,690,000/= being the mesne profits from the expected income from my tenants in the demise premises that were rented to me, among others.
4. That the Applicants' application is incompetent as they do not have the right of audience in this honorable Court since the Applicants were served with the summons and Plaint and failed to file their defenses within the stipulated 15 days.
5. That in the default by the Applicants/Defendants to file their defenses in time prompted my lawyers to apply for default judgment and the case be set down for hearing ex-parte to determine my claims against the Applicants herein and formal proof of others claims by me against the Applicants herein.
6. That I am further informed by my above mentioned lawyers which information I verily believe to be true that the application for interlocutory

judgment was entered in my favor, and what was for the case to proceed ex-parte for formal proof against the Applicants.

7. That in further reply to paragraph 4 the Applicants have never made any application for leave to file their defence out of time and thus, thus their purported written statement of defence and this instant application are bad in law and ought to be struck out with costs.
8. That in reply to paragraphs 5 and 6 of Serwe Derrick's affidavit, the high court has an unlimited Civil Jurisdiction to entertain a recovery claim of recovery of 177,690,000/= arising out of breach of contract and as such the purported preliminary objection is devoid of any merit and should be dismissed with costs.
9. That in further reply to paragraphs 5 and 6 of Serwe Derrick's affidavit, I am advised by my above mentioned lawyers which advise I verily believe to be true that my claim in court being a contractual matter, this honorable court has the administrative jurisdiction to entertain the same.
10. That my reply to their affidavit is an indication of a defence to my claims against them before this court and as such the Applicants cannot claim that I have no cause of action against them.
11. That I have been further advised by my above mentioned lawyers which advice I verily believe to be true that the Application is incompetent; wastage of court's time and the same should be dismissed with costs to me.

The Applicants filed an affidavit in rejoinder deponed by Mr. Serwe Derrick responding to the Respondent's Affidavit and briefly stated as follows;

1. **THAT** have read the Respondent's affidavit in reply with the assistance of our advocates of Ssemambo & Ssemambo Advocates, understood the contents therein which we have found to contain material falsehoods and I wish to respond to the same as hereunder.

2. **THAT** in reply to paragraphs 3 and 4 of the Respondent's affidavit in reply, I reiterate my averments in paragraphs 2, 3 and 4 of my affidavit in support of this application.
3. **THAT** in reply to paragraph 5 of the Respondent's affidavit in reply, I have been informed by my aforementioned advocates which information I verily believe to be true that our Written Statement of Defence was filed in the honourable court on the 14<sup>th</sup> day of April 2022 via the Electronic Court Case Management Information System (ECCMIS) and the same was validated on the 19<sup>th</sup> day of April 2022.
4. **THAT** I have been further informed by my said advocates herein which information I verily believe to be true that summons to file a defence were issued by this honourable court on the 11<sup>th</sup> day of April 2022 requiring us to file a defence within fifteen (15) days, and we filed our defence on the 14<sup>th</sup> day of April 2022, three (3) days after the issuance of the summons.
5. **THAT** in reply to paragraphs 6 and 7 of the Respondent's affidavit in reply, I have been informed by my said advocates which information I verily believe to be true that the application for a default judgment made by the Respondent is null and void as it is premised on false facts.
6. **THAT** in further reply to paragraphs 6 and 7, I have been informed by my said advocates therein which information I verily believe to be true that court cannot grant a default judgment for the suit to proceed ex parte where a defense is filed within the statutory period of fifteen (15) days.
7. **THAT** I have been further informed by my said advocates which information I verify to be true that the purported application for a default judgment is a blatant abuse of court process as it was filed on the 29<sup>th</sup> day of April 2022 way after we filed our Written Statement of Defence.

8. **THAT** in reply to paragraph 8 of the Respondent's affidavit in reply, I have been informed by the said advocates therein which information I verily believe to be true that we did not have to apply for leave to file our defense since we filed within fifteen (15) days.

The Applicants were represented by **Counsel Ssemambo Rashid** and the Respondent were represented by **Counsel Abbo Francis**. The Applicants in their written submissions raised the following issues for resolution;

- 1) Whether the Respondent's/Plaintiff's suit and or claims in H.C.C.S No. 0094 of 2022 is incompetent for lack of Jurisdiction?*
- 2) Whether the Respondent's/Plaintiff's pleadings and claims in H.C.C.S No. 0094 of 2022 fail to raise any reasonable causes of action against the Applicants?*
- 3) What remedies are available?*

### Determination

Before, I resolve the above issues raised for determination I wish to first resolve the preliminary point of law raised by the Respondent in his affidavit in reply.

The Respondent in his affidavit opposing this application under paragraphs 5, 6, 7, and 8 inter alia stated that whereas the Applicants were served with the summons and Plaint to file their defense, they did not file their Defense within 15 days. The Respondent further averred that a default judgment was entered in his favor.

However, The Applicants in their affidavit in rejoinder under paragraphs 4, 5, and 6 stated that they filed their written statement of defense on the 14<sup>th</sup> day of April 2022 via the Electronic Court Case Management Information System (ECCMIS) and the same was validated on the 19<sup>th</sup> day of April 2022. The Applicants further

stated that they filed their defense within fifteen (15) days, on the 14<sup>th</sup> day of April 2022, three (3) days after the issuance of the summons.

I have had an opportunity to check the ECCMIS System to determine whether the Applicants indeed filed their Written statement of defense within fifteen (15) days and whether a default judgment was ever issued against the Applicants.

The Applicants filed their written statement of defense on the 14<sup>th</sup> day of April 2022, three (3) days after this honorable issued summons to file a defense. I find no evidence supporting the Respondent's averments raised.

I have further noted that there is no judgment signed on the court record. The ECCMIS system only indicates an application for a default judgment that was filed after the Applicants had already filed their written statement of defense on the 14<sup>th</sup> day of April 2022.

I find no merit in the preliminary objection raised by the Respondent and therefore I shall now resolve the issues raised as follows;

***Whether the Respondent's/Plaintiff's suit and or claims in H.C.C.S No. 0094 of 2022 is incompetent for lack of Jurisdiction?***

The Applicants under Paragraphs 4, 5, and 6 of the affidavit in support of the application, stated that the suit filed by the Respondent concerns itself with land matters entertained by the High court -Land division and not the High Court - Civil division. The Applicants further stated that the High Court -Civil Division lacks jurisdiction to entertain a land dispute.

The Respondent under Paragraph 10 of his affidavit in opposition of the application stated that this honorable has the administrative jurisdiction to entertain the same.

As submitted by the Respondent, the Applicants have extensively submitted on the issue of unlimited jurisdiction of this court and have associated themselves with the submissions made. However, what remains in dispute is whether the High Court -Civil division is clothed with the jurisdiction to entertain such a suit.

The Applicants cited the case of **C.A.T BISUTI v BUSOGA DISTRICT ADMINISTRATION C.S. NO. 83 OF 1969** wherein court held that;

Under Order 7 rule 1(1), the Plaintiff had the obligation of pleading facts showing that the court had jurisdiction, and a mere assertion that the court had jurisdiction was not enough. What mattered was not an assertion in the Plaint that the court had jurisdiction but a statement of facts showing jurisdiction.

The Applicant further cited the case of **ALEXANDER C MUTONGOLE vs NYANZA TEXTILE INDUSTRIES LTD CA NO. 94 OF 1968**, where court noted that;

It is a time-honored practice for lawyers to insert in their complaints what was, in the court's view a useless surplusage, a statement that "this honorable court has jurisdiction". Such statement alone did not bestow jurisdiction upon any court.

The aforementioned authorities are instructive in resolving this issue, the Plaintiff must not just state that court or a division of court has administrative jurisdiction but rather the Plaintiff must plead facts that demonstrate that court has jurisdiction.

To discern whether or not this Honorable court has jurisdiction, one needs to peruse the Plaint so as to examine the prayers therein. The prayers state thus;

- i) A declaration that Defendants jointly are in breach of their tenancy agreement with Plaintiff,
- ii) A declaration that the Defendants' actions of entering the demised premises and forcefully taking over the operations of the Plaintiff before the expiry of the tenancy period amounted to Trespass and are illegal.



All the declarations and orders sought by the Respondent from this court arise from land belonging to the Applicants which was rented by the Respondent. The civil division of the High court of Uganda does not resolve matters of a land nature like the present case of trespass and landlord tenant relationship and the same best suited to be heard in the High court land division.

By seeking to declare the Applicants trespassers and further seeking orders arising from land relations, the respondent had to file or ought to have filed his suit in the land division and not the civil division.

I, therefore, find that the HCCS No.0094 of 2022 was wrongly filed in High court-civil division, this division may have the jurisdiction to hear and determine the same but this would defeat the purpose of creating divisions to ease work and encourage judicial administration through creation of specific divisions. Under the current ECCMIS it is problematic to recklessly file matters in any division with a view that the same shall transferred to the appropriate court.

The act of filing matters in courts which have not been specifically designed is an abuse of court process. This must be discouraged and it is an act of forum shopping to avoid a specific division. This has become a habit for parties to file matters which do not belong to civil division so that they easily get a date for hearing or force the other party to consent.

This court *suo motu* should in all such circumstances dismiss the suit so that the learned counsel for the plaintiff is able to file a suit in the proper court since the ECCMIS system does not have room or options for transfer of suits by the concerned judicial officer. The advocates should appreciate that there is a new system of dispensing justice and the same shall be defeated by parties choosing to file matters willy-nilly wherever they wish without regard to the nature of the subject matter.

The main suit or matter would be dismissed for the above reasons and not for the reason of lack of jurisdiction since the high court has unlimited jurisdiction. I will

not delve into the second issue of lack or non-disclosure of cause of action since it would prejudice the respondent in their future endeavours.

This Application partially succeeds with costs to the applicant.

I so order

**SSEKAANA MUSA**

**JUDGE**

**22<sup>nd</sup> September 2022**