

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

MISC. APPLICATION NO. 0627 OF 2022

(ARISING FROM CIVIL SUIT NO. 428 OF 2020)

DAMANICO PROPERTIES LTD..... APPLICANT

VERSUS

KAUSHIK ROY DAMANI.....RESPONDENT

BEFORE; HON. JUSTICE SSEKAANA MUSA

RULING

This was an application brought under Section 6 and 98 of the Civil Procedure Act Cap 71, S.33 of the Judicature Act Cap.13, Oder 52 rule 1 and 3 of the Civil Procedure rules for orders that;

1. Hearing of HCCS No. 428 of 2020 be stayed pending the hearing and determination of Company Cause No. 03 of 2015.
2. Costs of the Application be provided for.

The grounds upon which this application are set out in the affidavit of the applicant which briefly states as follows;

1. On the 3rd day of February, 2015, Irene Damani, Paraus Damani and Krisma Damani filed Company Cause No. 03 of 2015 against Lakeside City Ltd.
2. That on 11th day of July 2019, Kaushik Roy Damani filed HCCS No. 617 of 2019 against Damanico Properties Limited in the High Court of Uganda Land Division. The said suit was transferred to the High Court

of Uganda at Civil Division and given new number as HCCS No. 428 of 2020.

3. That on the 6th day of July, 2020 Irene Damani, Paraus Damani and Krisma Damani filed an Amended Company Cause No. 03 of 2015, joining the applicant herein in the said company cause; inter alia challenging the validity of the Consent Judgment/Decree in HCCS No. 279 of 2015 and the deed of assignment.
4. The matters in issue in HCCS No. 428 of 2020 pending before this Honourable Court, are the also directly and substantially in issue in Company Cause No. 03 of 2015.

The respondent opposed the application and filed an affidavit in reply briefly contending that;

1. That it was the duty of the applicant to execute the terms of the memorandum of understanding. As a result of applicant failing to comply with the terms of the understanding resulted in multiple suits. The application is brought in bad faith and the applicant is abusing the court process.
2. That the respondent is not a party to the company cause and being a director in Lakeside City Ltd does not make him a party to Company Cause No. 03 of 2015.
3. That the cause of action in Civil Suit No. 617 of 2019/428 of 2020 is for breach of contract seeking specific performance and damages whereas the Cause of the Company Cause No. 03 of 2015 is for Winding up of Lakeside City Ltd (and not against the respondent herein)
4. That this application is brought in bad faith and in abuse of court process.

Issues for determination

1. *Whether HCCS No. 428 of 2020 can be stayed pending the hearing/determination of Company Cause No. 03 of 2015?*
2. *What remedies are available*

The applicant is represented by Counsel Mugogo Edward while the respondent was represented by Counsel Kasumba Patrick.

Determination

The applicant's counsel submitted that ***section 6 of the Civil Procedure Act*** provides for stay of any suit or proceedings in which the matter in issue is also directly in issue in a previously instituted suit or proceedings between then same parties.

Counsel relied upon the case of ***Spring International Hotel v Hotel Diplomat & Bonny Katatumba HCCS 227 of 2014*** which set out three considerations;

1. *Whether there is a previously instituted suit between the same parties?*
2. *Whether the matter in issue is directly or substantively in issue in a previously instituted suit.*
3. *Whether the suit pending is in a court which has a jurisdiction to grant the relief claimed.*

The applicant contended that the respondent is claiming 50% of the value of the applicant's part of land under an alleged memorandum of understanding. The matter under the company cause is challenging the validity of the Consent Judgement/decreed in HCCS No. 279 of 2015 and the deed of Assignment which in counsel's view form the basis of the company cause.

The respondent submitted that the parties are different since the respondent is not a party to the suit (Company Cause No. 03 of 2015) since it is between Irene Damani, Paraus Damani and Krisma Damani and Lakeside City and Damanico Properties Ltd.

It was further contended that the position of the law is that suits are not similar in issue where the parties are different and the prayers to court are different. The cause of action in civil suit is for specific performance and damages while in the company cause it for winding up of Lakeside City Ltd.

Analysis

Section 6 of the Civil Procedure Act provides for **Stay of Suit**

No court shall proceed with the trial of any suit or proceeding in which the matter in issue is also directly and substantially in issue in a previously instituted suit or proceeding between the same parties, or between parties under whom they or any of them claim, litigating under the same title, where that suit or proceeding is pending in the same or any other court having jurisdiction in Uganda to grant the relief claimed.

The 'matter in issue' in section 6 of the Civil Procedure Act does not mean any matter in issue but has reference to the entire subject matter in controversy; it is not enough that one or some issues are common. The subject matter in the subsequent suit must be covered by the previous suit, not *vice versa*. *See Jadva Karsan v Harnam Singh Bhogal (1953) 20 LRK 74.*

In this the present circumstances, the parties were different and in the main company cause they were seeking to have the company wound up although they have since amended the same to challenge a validity of consent judgement/deed and the deed of assignment. The respondent's issues or claims can never be determined in a matter whose sole aim is to have the company wound up and there is big difference in the claims between the parties.

The Supreme court has set out the principles governing a stay of proceedings in the case of *American Express International Banking Corporation v Atul* [1990-1994] EA 10 as follows;

- (a) First the need for an applicant for a stay must satisfy the court that the continuance of the action against him would be an injustice to him because it would be oppressive or vexatious to him.*
- (b) In order to justify a stay two conditions must be met, one positive and the other negative:*
 - (i) The defendant must satisfy the court that there is another forum to whose jurisdiction he is amenable in which justice can be done between the parties at substantially less inconvenience or expense, and*
 - (ii) The stay must not deprive the plaintiff of a legitimate, personal or juridical advantage which would be available to him if he invoked the jurisdiction of court.*

The decision whether to allow or refuse an application for a stay of action, even though the court has jurisdiction to try and determine it, is a discretionary decision of the court. The high court has inherent jurisdiction to order a stay of suit for sufficient reason so far as a stay is concerned, as distinct from the question whether a stay ought to be ordered, the provisions of the Civil Procedure Act are irrelevant.

The matter which the applicant wants the court to stay has been in this court since 2015 and no progress has been made in its determination. This court cannot allow an old matter to impede the progress on the suit since the motives of the petitioners in the company cause are not known to this court. The respondent is at liberty to pursue his case without making reference to an old matter which has been in court for now 8 years.

The respondent is not a party to the Company Cause No. 03 of 2015 and cannot direct the proceedings since it is the petitioners- Irene Damani, Paraus Damani and Krisma Damani with the duty to prosecute their matter and in case of failure to prosecute or even if it successfully prosecuted and

determined it would not guarantee the respondent any direct remedy. The position of the law is that suits are not similar in issue where the parties are different and the prayers to court are quite different. *See Edward Ssentenza & Anor v Donnie HCT-00-CV-CI-0005-2016 citing Obbo v Owor [1988-90] HCB 929*

In sum therefore, the application fails and is dismissed with costs.

I so order

Ssekaana Musa

JUDGE

15th September 2023