

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT JINJA
HCT-03-CV-MA-0097-2023
(ARISING FROM HCCS NO.17 OF 2023)

HARD ROCK QUARRY (U) LTD:.....
APPLICANT

VERSUS

LUKONGE COTTON COMPANY
LIMITED:.....RESPONDENT

Held: Application granted with all the Orders prayed for Granted.

Costs are awarded to the Applicant.

BEFORE: HON. JUSTICE DR. WINIFRED N NABISINDE

RULING

This Ruling follows an Application brought under **Section 98 of the Civil Procedure Act Cap 71 (CPA), Section 33 of the Judicature Act Cap 13 and Order 52 rule 16 and Order 52 rules 1, 2 and 3 of the Civil Procedure Rules SI 71-1 (CPR as Amended)** seeking for Orders that:-

1. **Civil Suit No. 17/2021; Lukonge Cotton Company vs Hard Rock Quarry (U) Ltd & Commissioner Land Registration** is unmaintainable in law for being founded on illegalities and should be rejected, struck out and /or be dismissed.
2. The Respondent herein has no *locus standi* to bring **High Court Civil Suit No. 017/2021** against the Applicant.
3. The Respondent's suit in **HCCS No. 017/2021** as against the Applicant be rejected, struck out and/or dismissed for failure to disclose a cause of action against the Applicant
4. The Respondents suit in **HCCS No.017/2021** is *res judicata* and this Court being *functus officio*.
5. Costs of the Application be provided for.

The above stated grounds are reiterated in the Affidavit in Support of the Application deponed by **Surjit Singh Bharj**, the Applicant, the gist of which are that :-

1. The Respondent sued the Applicant in **Civil Suit No. 017of 2021** in this Honourable Court claiming interest as the registered proprietor having been registered thereon on the 5/8/2020 and the Applicant denies that the alleged interest exists.
2. That the Applicant is the owner of land styled as LRV JJA 414 Folio 22 Plot 68-72, Industrial Estate Road, Masese II, Jinja Municipality formerly LRV JJ/0346 Volume JJA 74 Folio 7 Plot 68-72 by virtue of an Order of this Honourable Court in **HCMA NO. 211/2020** delivered on 18/05/2021. **(A photocopy of the said Order is hereto attached as "B")**.
3. That he had been advised by the Applicant's lawyers of Malinga, Kinyiri Co. Advocates which advice he verily believe to be true that the Respondent purported to buy the suit land from Steel Rolling Mills Ltd while there was a pending **Appeal (No.115/2015)** before this Honourable Court between the Applicant and Steel Rolling Mills Limited which sought to sell the suit land to the Respondent. The said Appeal was resolved in favour of the Applicant. **(Photocopies of the Order and Ruling arising from the said Appeal are hereto attached as "C" and "D respectively)**.
4. That the Respondent herein having illegally acquired a Certificate of Title to the suit land as above, the Applicant sought to protect its interests by lodging a caveat on 30/09/2020.
5. That he is advised by the Applicant's lawyers and he verily believed them that the caveat lodged by the Applicant served the purpose of protecting its interests and defeating the admitted plot by the Director of the Respondent to sell the suit land to a third party. **(A photocopy of the Affidavit of Bharat Thumar deponing to the same is hereto attached as "E")**.
6. That he had also been informed by their lawyers mentioned herein above and he believed them that both the Commissioner Land Registration and Steel Rolling Mills Ltd. from whom the Respondent purportedly acquired title to the said land were aware of the Order of Court in **HCCA No. 115/2015**, the same having been served on them on 30/06/2020 respectively. **A photocopy of the said served Order is attached to paragraph 4 above as C"**
7. That he had further been advised by the said lawyers mentioned in paragraph 4 above and he believed the same to be true that the transaction between the Respondent and Steel Rolling Mills Ltd was illegal, null and void since it was concluded in 2018 whilst there was a pending Appeal **(No. 115/2015)** between the Respondent and Steel

Rolling Mills Ltd contrary to the law, **(A photocopy of the Sale/Purchase Agreement between the Respondent and Steel Rolling Mills Ltd is hereto attached as "F")**.

8. That this Honourable Court in its Ruling in **HCMA NO. 211/2020** among other Orders declared that LRV JJ/0346 VOL JJA 74 Folio 7 Plot 68-72 Jinja Municipality, Block Industrial Estate and LRV JJ414 Folio 2 Plot 68-72 Land at Masese, Jinja City is one and the same piece of land in issue which the Commissioner Land Registration was ordered by this Court to be reinstated into the name of the Applicant as per **Annexure "B"** in paragraph 3 above.
9. That he had further been advised by their lawyers herein above mentioned which advice he believed is true, that **HCCS No. 017/2021** filed by the Respondent against the Applicant herein and from which the instant Application arises, is without a cause of action, the Applicant lacks **locus standi** to institute the same, it is founded on illegalities, is null and void and this Honourable Court ought not to entertain it.
10. That this Honourable Court has already pronounced itself on the suit land in **HCCA No. 115/2015 and HCMA No.211/2020** and made Orders thereunder which are yet to be effected by the Commissioner, Land Registration. The said Orders are attached herein as **"C" and "B" respectively**.

The Respondents filed an Affidavit in Reply which was deponed by **Bharat Thumar**, in which he deponed that:-

1. The Respondent Company is the registered proprietor of land comprised in LRV. JJA414 Folio 22 Plot 68-72 at Masese Jinja having been registered on the Certificate of Title of the said land under Instrument No. JJA- 00021756 on the 5th day of August 2020.
2. The Respondent Company on intending to develop the said land, it inquired from the Physical Planning Department of Jinja City as to the requirements necessary approval of its development/architectural plan for the suit land, where upon it was requested to submit a photocopy of the certificate of title, current search report for the suit land and payment of the necessary fees.
3. When the Respondent applied for a Search Report of the suit land from the Ministry Zonal Offices at Jinja, it (the Search Report) revealed that the suit land had been encumbered with a caveat lodged by the Applicant Company on 30th day of September 2020 under Instrument No. JJA-00022473.

4. On the 9th day of December 2020, the Respondent Company through its lawyers wrote to the Applicant Company demanding for the withdraw and/or removal of the applicant's Caveat as had been disclosed in them a Search Report, but the it received no response from the Applicant.
5. The Respondent Company thus instituted **HCMC No.05 of 2021; Lukonge Cotton Co. Ltd vs Hard Rock Quarry (U) Ltd & Anor** with the view to obtain an order of court compelling the applicant and/or the Registrar of Titles to vacate the said caveat lodged on the on the respondent's land comprised in LRV. JJA414 Folio 22 Plot 68-72 at Masese Jinja by the applicant.
6. When the Respondent served onto the Applicant the pleadings in the said suit, the applicant filed its response to the suit admitting lodging a caveat on the said suit land claiming interest therein, but neither included and/or attached the caveat documents lodged at Ministry Zonal Offices.
7. The applicant in its Affidavit in Reply in **HCMC No. 05 of 2021** still through fraud deliberately concealed from court and/or refused to indicate nor inform court when **HCMA No. 05 of 2021** first came up in court on the 5th day of May 2021 that it had preferred **HCMA No.211 of 2020; Hard Rock Quarry (U) Ltd-vs-Commissioner Land Registration & Steel Rolling Mills Ltd** which Application had a gross impact/effect of respondent's name cancelled and replaced by the Applicant's name on land comprised LRV. JJA41 4 Folio 22 Plot 68-72 at Masese Jinja.
8. The Applicant in its pleadings in **HCMA No.211 of 2020; Hard Rock Quarry (U) Ltd-vs-Commissioner Land Registration & Steel Rolling Mills Ltd** which were not served on any of the respondents therein did not indicate to the court that the Certificate of Title for land comprised LRV. JJA414 Folio 22 Plot 68-72 at Masese Jinja that it sought to have its name registered onto was neither registered in its names nor those of the respondents before court.
9. At the time the Applicant preferred **HCMA No.211 of 2020; Hard Rock Quarry (U) Ltd-vs-Commissioner Land Registration & Steel Rolling Mills Ltd**, it was aware that the respondent was the registered proprietor and had possession of land comprised LRV. JJA414 Folio 22 Plot 68-72 at Masese Jinja; and a Ruling was delivered in **HCMA No. 211 of 2020** by the court on the 18th day of May 2021 while **HCMC No. 05 of 2021** for removal of the Applicants' caveat was still pending determination by the court without having all the relevant

facts as to the proprietorship of land comprised in LRV. JJA414 Folio 22 Plot 68-72 at Mases Jinja and also according the respondent a hearing (fair trial) to Defend its interests in the said property.

10. The decision of the court in **HCMA No. 211 of 2020** sought to divest the Respondent its propriety interest in land comprised in LRV, JJA414 Folio 22 Plot 68-72 t Masese Jinja without the applicant having been part of the said proceedings.
11. The Respondent was aggrieved by the decision in **HCMA No. 211 of 2020** which was an Application for review which decision the Applicant could not move court to review the same since the said decision was obtained through fraud of the Applicant on the court.
12. That he wanted to categorically state that the Respondent's **HCCS No. 17 of 2021** was instituted to highlight the Applicant's fraud in obtaining the decision in **HCMA No. 211 of 2020** which sought to divest its proprietary interest in land comprised in LRV, JJA414 Folio 22 Plot 68-72 at Masese Jinja and nullify the same and also for the court to declare the rightful Owner of land comprised in LRV. JJA414 Folio 22 Plot 68-72 at Mases Jinja.
13. When **HCCS No. 17 of 2021** was called for mention, it was consolidated with **HCMC No. 05 of 2020**, the suit was set down for scheduling and the matters raised herein were set out as issues for determination by the court having been raised first as points of law. **[See copy of the Joint Scheduling Memorandum hereto attached and marked as the matters annexure "A"]** for determination in the instant application are raised for determination in the main suit and the interest of justice dictate this Application be dismissed to avoid wastage of the court resources and time.
14. That he is advised by the above said Respondents legal counsel whose advise he verily believed to be correct that the instant application is an abuse of court process, does not meet the test of law, misconceived and ploy for the applicant not have the court investigate the matters in dispute and declare the rightful owner of land comprised in LRV. JJA414 Folio 22 Plot 68-72 at Masese Jinja.

In rejoinder, the Applicant deponed that he is reliably informed by my lawyers of Malinga, Kinyiri & Co. Advocates and he verily believed them that;-

1. The Respondent has not in its reply answered or addressed the points of law raised in the Application for striking out the main suit.

2. The Respondent has not in its Affidavit in Reply specifically traversed the points of law raised in the Application; and that the Application as it stands is uncontroverted.
3. In specific rejoinder to paragraphs 3,4,5,6,7,8,9,10,11,12,13,14 and 16 of the Affidavit in Reply, that they are an attempt at narrating the precedents on the subject matter and do not address the points of law which are the subject of the instant Application,
4. In rejoinder to paragraph 15 of the Affidavit in Reply, that the Respondent's allegation of fraud is an attempt to hoodwink Court to ignore the points of law raised in the Application; and that the points of law raised in this Application dispose of the suit in its entirety.
5. In specific rejoinder to paragraph 17 of the Affidavit in Reply, that raising points of law in the pleadings does not prejudice the Respondent and is not a bar to raising the same at any time, in an Application of this nature; and in specific rejoinder to paragraph 18 of the Affidavit in Reply, that the Application is not an abuse of court process and is properly before court.
6. This has already pronounced itself on the ownership of the suit land in **Civil Appeal No. 115/2015, Hard Rock Quarry (U) Ltd V Commissioner Land Registration & Steel Rolling Mills Ltd**, and also in **Misc. Application No. 211/ 2020: Hard Rock Quarry (U) Ltd vs Commissioner Land Registration & steel Rolling Mills Ltd**.

REPRESENTATION

When this Application came before me for hearing, the Applicant was represented by learned Counsel Juma Kinyiri and Counsel Godfrey Malinga of M/S. Malinga, Kinyiri & Co. Advocates, while the Respondent was represented by learned counsel Nkuutu Shaban of M/S. Dhakaba & Nkuutu Co. Advocates.

Both parties were directed to file Written Submissions and they have all complied. I have analyzed the same and relied on them in this Ruling.

THE LAW

Section 98 of the Civil Procedure Act Cap 71 (CPA), provides that:-

"Nothing in this Act shall be deemed to limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court".

This section empowers the court to grant any orders in all cases in which it appears to the court to be just and convenient to do so to ensure that justice is not only done, but seen to be done.

Section 33 of the Judicature Act empowers this court to grant absolutely or on such terms and conditions as it thinks just, all such remedies as any of the parties to a cause or matter is entitled to in respect of any legal or equitable claim properly brought before it, so that as far as possible all matters in controversy are finally determined and all multiplicities of legal proceedings concerning any of those matters avoided. **See HC CA NO. 07 OF 2011 Kaahwa Stephen & Another vs Kalema Hannington** per Hon. Lady Justice Monica K. Mugenyi.

This section empowers the court to grant orders in all cases in which it appears to the court to be just and convenient to do so to restrain any person from doing certain acts. The main principle in this section is whether the dictates of justice so demand.

In effect, the import of the above provisions is that the High Court wields wide powers with unlimited jurisdiction and inherent powers to administer justice and investigate all disputes existing between the parties and provide remedies to the parties.

And **Order 52 rule 16 and Order 52 rules 1 ,2 and 3 of the Civil Procedure Rules SI 71-1 (CPR as Amended)** provides for the mode in which Applications of this nature should be commenced.

Having carefully analyzed the application, the law and the submissions of counsel as captured above, it is my finding and decision that the application has merit; and it is accordingly granted.

RESOLUTION OF THE APPLICATION

It was submitted by learned counsel for the Applicants that this Application is brought under the provisions of **Section 98 of the Civil Procedure Act Cap 71. Section 33 of the Judicature Act Cap 13, Order 6 Rules 28, 29 and 30, Order 7 Rule 1 (a) & (d) and Order 52 Rules 1, 2 and 3 of the Civil Procedure Rules S.I 71-1** for Orders that the Respondent's suit (**HCCS No.017/2021**) is not maintainable in law for being barred by law; and should be rejected, struck out and/or dismissed.

Also, that the Respondent has *no locus standi* to bring **HCCS No. 17/2021** against the Applicant, and consequently the said suit discloses no cause of

action against the Applicant, the suit is res judicata and this Honourable court is *functus officio* and that the costs of the Application be provided for.

The Application is supported by an Affidavit sworn by Surjit Singh Bharj. A Director of the Applicant which briefly states that **HCCS No. 017/2021** is barred by law, that the Respondent has no *locus standi* to file the said suit and consequently the same discloses no cause of action against the Applicant, that the suit should be dismissed for being res judicata and the Court being *functus officio*, that the Applicant filed a Written Statement of Defence to the said suit and to date there has been no specific reply to that Defence in respect of the points of law raised therein, that it is in the interest of justice that the Application be allowed.

That it should also be noted from the onset that though the Respondent herein filed an affidavit in reply sworn by Bharat Thumar, it did not answer or traverse the points of law raised in this application, to wit; that **HCCS No. 17 of 2021** is founded on illegalities; that the Respondent has no *locus standi* to file **HCCS No. 17 of 2021** and consequently no cause of action; that the suit should be dismissed for being res judicata and the Court *functus officio*; that there is no reply to the defence in **HCCS No.017 of 2021**.

They cited the Constitutional Court in ***Oloka Onyango & 9 Ors v Attorney General (Constitutional Petition No. 8 of 2014)***, while citing **Order V III rule 3 of the Civil Procedure Rules** held thus:

"In view of the above rule and in the absence of a specific denial by the respondent in his pleadings... the evidence contained in the affidavit... stood strong and unchallenged. In the case of H.G. Gandesha v G J. Lutaya SCCA No. 14 of 1989 court observed that where facts are sworn to an affidavit, the burden to deny them is on the other party. Failure to do that, they are presumed to have been accepted."

Similarly, that in ***Kabwogyi Eresome & 4 Others v Kyabashaua Jovia Busingye & Anor. HCMISC. Application No. 1106 of 2020***, Hon Mr. Justice Henry I. Kawesa held that "... *The position of this scenario is that once not controverted the allegations remain unchallenged... I wish to make a finding that on the basis of failing to controvert the pleadings in ... the applicant's preliminary objection succeeds with a finding that the Respondents/Plaintiffs lacked locus standi to bring the suit.*"

Likewise, they invited court to find that in the Respondent's Affidavit in Reply contravenes **Order 8 rule 3 of the Civil Procedure Rules** in failing to controvert the allegations in this Application and therefore on that basis the

allegations in this Application remain unchallenged and are admitted by the Respondent.

Further, they argued that the Respondent herein filed **High Court Civil Suit No. 017 of 2021** against the Applicant and the Commissioner Land Registration seeking a declaration among others that it is the lawful owner of land comprised in LRV JJA 14 Folio 22 Plots 68-72 land at Masese Jinja City, an Order directing the Commissioner Land Registration to vacate the caveat lodged on the suit land by the applicant herein, a permanent injunction prohibiting the registration and/or reinstatement of the applicant herein as proprietor of the suit land, general, exemplary, punitive damages, interest and costs of the suit.

They therefore submitted that the said suit is barred by law for being founded on a number of illegalities and as such it should be dismissed,

In addition, that this Honourable court is *functus officio*; it heard and pronounced itself on the issue of ownership of the suit land in **High Court Civil Appeal No. 115 of 2015; Hard Rock Quarry (U) Limited v Commissioner Land Registration and Steel Rolling Mills Ltd**, and among others, ordered the Commissioner Land Registration to reinstate the Applicant as the registered proprietor of the suit land having found it to be the lawful owner of the same. This Order/Decree in effect settled the issue of ownership of the suit land.

That this court also by way of review settled the issue of the description of the suit land vide **High Court Miscellaneous Application No. 211 of 2015** which reviewed the **Order and Decree in CA No. 115 of 2015** by adding two Orders thus;

- a. *That the land comprised in JJ/0346 Volume JJA74 Folio 7 Plot 68-72 Jinja Municipality, Block Industrial Estate is the same land now as LRV JJA 414 Folio 22 Plot 68-72, Industrial Estate Road, Masese II, Jinja municipality.*
- b. *That the Commissioner Land registration is ordered to reinstate the Applicant as the registered proprietor of land now comprised in LRV JJA 414 Folio 22 Plot 68-72, industrial estate Road, Jinja Municipality, Masese II, Jinja.*

That in order to persuade the court, they relied on the Judgment of the Court of Appeal in **Swaliki Gguta v Uganda, Criminal Appeal No. 231 of 2016** referred to **Black's Law Dictionary, 9th Edition** for the definition of *functus officio* to mean "*without further authority of legal competence because the*

*duties of the original commission have been fully accomplished"; and a persuasive decision from Botswana of **Magdeline Makinta v Fostina Nkwe, Court of Appeal No. 26/2001**, for the holding that " The general principle now well established in south Africa as well as Botswana is that once a court has duly pronounced a final judgment or order, it has itself no authority to correct, alter or Supplement it. The reason is that it becomes thereupon functus officio, its jurisdiction in the case having been fully and finally exercised, its authority over the subject matter has ceased. "*

They further cited the case of **Major (Rtd.) Rowland Kakooza Mutale v Balisigara Stephen CA Consolidated Civil Applications Nos. 121 and 227 of 2020**, where the Court of Appeal cited with approval the Supreme Court of India decision in **Sunita Jain v Pawar Kumar Jain & Ors, Case No. 174 of 2008**, where it was held: "*...as a general rule, as soon as judgment is pronounced or order is made by a court, it becomes functus officio (ceases to have control over the case) and has no power to review, override, alter or interfere with it.*"

They contended that this Court having pronounced itself on the issue of ownership of the suit land cannot therefore revisit the said issue, lest it contradicts itself and the Orders already given.

Secondly, that **Civil Suit No. 17 of 2021** is *Res Judicata*. The Respondent herein purported to buy the suit land from **Steel Rolling Mills Ltd while there was a pending appeal (No. 115/2015)** before this Honourable Court (contrary to **Section 91 (11) of the Land Act**), between the Applicant and Steel Rolling Mills Ltd which then sold the suit land to the Respondent, hence assuming the impugned title to the suit land and securing a Certificate of Title, all illegally but obtaining under Steel Rolling Mills Ltd, the 1st Respondent in **High Court Civil Appeal No. 115 of 2015**. That in the said Appeal from the decision of the Commissioner Land Registration was ultimately heard and decided in favour of the Applicant herein with Orders for its reinstatement on the suit land as Proprietor thereof.

Moreover, the transaction between the Respondent herein and statutory restraint on alienation whilst the Appeal was pending, making the said transaction void and incapable of vesting any interest in the land unto the Respondent, for a land transaction undertaken in breach of a statutory provision creates no interest in land. Steel Rolling Mills Ltd purported to sell to the Respondent what it did not lawfully/legally own.

Consequently, that a person cannot grant a greater interest than he or she possesses as per ***Erina Lam Oto Ongom v Opoka Bosco & Anor HCCA No. 009I/2019.***

That the Applicant herein then lodged a caveat on the suit land to protect its interest as pronounced by this Honourable Court and ultimately foiled attempts by the Respondent to sell the suit land to a third party even when it had no interest therein legally.

They therefore argued that, **Res Judicata** is provided for under **section 7 of the Civil Procedure Act** thus;

"No court shall try any suit or issue, in which the matter directly and substantially in issue in a former suit between the same parties or between parties under whom they or any of them claim litigating under the same title, in a court competent to try the subsequent suit or the suit in which the issue has been subsequently raised and had been heard and finally decided by the court.

They relied on the case of ***Onzia v Shaban Fadul High Court Civil appeal No. 19 of 2013*** while citing with approval the case of ***Ponsiano Semakula v Susane Magala and others (1993) KALR 213 and Karia and Another Attorney General and others (2005)1EA 83***, where Hon. Justice Stephen Mubiru stated thus: *"when a question of fact or a question of law has been decided on its merits between two parties in a suit or proceeding and the decision is final either because no appeal was taken to a higher court, or because the appeal was dismissed, or no appeal lies, neither party will be allowed in a future suit or proceeding between the same parties to canvass the matter again. The minimum requirements under the provision....*

(a) there has to be a former suit or issue decided by a competent court;

(b) the matter in dispute in the former suit between the parties must also be directly or parties in the suit where the doctrine is pleaded as a bar; and

(c) the parties in the former suit should be the same parties or parties under whom they or any of them claim, litigating under the same title".

That His Lordship further cited ***Boutique Shazim Limited v Narattam Bhatia and another C.A. Civil appeal No. 36 of 2007*** where it was held that:-

"essentially the test to be applied by court to determine the question of res judicata is this: is the plaintiff in the second suit or subsequent action trying

to bring before the court, in another way and in the form of a new cause of action which he/she has already put before a court of competent jurisdiction in earlier proceedings and which has been adjudicated upon? If the answer is in the affirmative, the plea of res judicata applies not only to points upon which the first court was actually required to adjudicate but to every point which belonged to the subject matter of litigation and which the parties or their privies exercising reasonable diligence might have brought forward at the time."

They submitted that as pointed out above, the Respondent herein brought **Civil Suit No. 017 of 2021** claiming an interest under Steel Rolling Mills Limited a Respondent in **High Court Civil Appeal No. 115 of 2015: Hard Rock Quarry (u) Ltd v. Commissioner Land Registration & Steel Rolling Mills Ltd** having purportedly bought the suit land from it by an Agreement dated June, 2018. At the time of the said transaction, **HCCA No. 115 of 2015** which was challenging the decision of the Commissioner Land Registration to cancel the Certificate of Title of the Applicant herein was yet to be disposed of.

A decision therein was rendered in favour of the Applicant by this Honourable Court on 8/05/2020 with the Orders cited above, including but not limited to ownership of the suit land.

That these were Orders in REM binding all persons whether parties to the proceedings or not as per **Saroji Gandesha v Transroad Ltd SCCA No. 13/2009** cited with approval in **Masereka & 3 Ors v Mbuiraghe & Anor HCCS No. 20/2017**.

That the purported sale of the suit land and the transfer of title by Steel Rolling Mills Ltd to the Respondent was effected when there was a pending Appeal in this Court against the Orders of the Commissioner Land Registration. This was contrary to **section 91(11) of the Land Act Cap 227** which prohibits the transfer of title by the person in whose favour a cancellation of title is made until the determination of the appeal against the decision of the Commissioner Land Registration.

That the suit land and the Certificate of Title were therefore procured in violation of the law and the subsequent orders of Court, which makes it an illegality and therefore null and void. That in **Nuru Juma v Kassiano Wadri HCMA NO. 0012/2017** it was held that;-

"A sale is a transfer of ownership and to constitute a sale there must be a clear intent of transfer of ownership from one person to another...It has been

held by the Court of Appeal in **Akayima Joyce & 3 Ors, B Nalumansi Kalule & 2 Ors CACA No. 111/2019** that

"The trite law is that what is done in contravention of an Act of Parliament such as under a contract prohibited by statute is illegal."

Furthermore, that the Certificate of Title held by the Respondent is invalid because there was effectively no title to transact upon which was purportedly transferred to Lukonge Cotton Company Ltd by Steel Rolling Mills Ltd, and neither is the Respondent a Bonafide Purchaser of the suit land because of the ILLEGALITY in the purported transaction between the said parties. That an illegal sale vitiates the transfer of title with the result that the sold property remains the property of its Owner, per **Kanoonya David v Kivumbi & 2 Ors HCCS NO. 616/2003 (Unreported)** cited with approval in **UBC v SINBA (K) LTD & 4 Ors CAC Appn. No. 12/22014**.

Further, in **Namusisi Kellen Nyamurungi Karara v nakamya Getrude & 4 Ors HCMA No. 312/2020** it was held that *"... the Applicant could not acquire a title from a party who had no valid title.*

As was also held in **Bishopgate Motor Finance v Transport Brakes (1949)1 ALL.ER 37** and in **Halling Manzoor v Serwan Singh Baram SCCA No.9 of 2001**, a person cannot pass title that he does not have.

As such, the Respondent has no *locus standi* to bring **Civil Suit No.17 of 2021**, and by extension, the Complaint does not disclose a cause of action against the applicant herein, and as such we invite court to reject the complaint in this suit for not disclosing a cause of action.

They therefore submitted that the Complaint in **HCCS No. 017 of 2021** should be rejected under **Order 7 rule 11 (a) and (d) of the Civil Procedure Rules** for not disclosing a cause of action, and for appearing from the statement in the complaint to be barred by law.

Furthermore, on the Respondent not having *locus standi* to institute **HCCS NO. 17/2021**, at the time of filing the said suit, the Respondent being an artificial person did not attach its Certificate of Incorporation to the Complaint, which was a fatal omission. Moreover, the Constitutional Court in **Rtd. Col Dr. Kizza Besigye & Ors v the DPP & AG Constitutional Petition No. 12/2006** held that only parties recognized by law as having a legal existence can sue or be sued.

That in **Fakrudin Vallibhai Kapasi & Anor v Kampala District Land Board & Anor HCCS NO. 570/2015**, it was held at page 14 of the Ruling of

the Court that “Sub rule (1) (Order 7 r. 14 CPR) which provides for where the plaintiff is “suing upon a document” essentially means he or she derives his or her authority and capacity to sue from the very document. Without proof of that authority or capacity the plaintiff lacks locus standi. Therefore, sub rule (1) (supra) is solely concerned with a plaintiff to the extent that he or she must have the locus standi at the time of filing the plaint the basis of which must be shown or demonstrated at the time when the plaint is presented in court for filing.

Proof of the authority or capacity of the plaintiff to sue must be attached with the plaint. Court on page 10-11 of the said case observed that it is emphasized that the unailing requirement is that locus standi to institute a suit, by whatever mode prescribed, and must be established at the time the suit is filed. This is done by expressly pleading facts that give the plaintiff the legal standing to institute the suit. It should not be left to the court to guess where a plaintiff derives the locus standi to file the suit. It must be expressly clear on the facts pleaded: particularly those that give rise to the cause of action in the plaint or counterclaim. ”

On page 12 of the same case Court held that “omission to file with the plaint the documents upon which a plaintiff sues renders the plaint fatally defective for disclosing no cause of action”.

This position was confirmed in the case of **Nile Ways Ltd v Kampala Capital City Authority (supra); and Ugafin Ltd v Kiwanuka (supra)**.

In addition, that **Order 7 r. 11 (a) CPR** provides that “a plaint shall be rejected where it does not disclose a cause of action”. That indeed in the now locus classicus case of **Auto Garage v Motokov [1971] E.A 314**, it was held, inter alia, that “a plaint without a cause of action is nothing and cannot be amended as there is nothing to amend. There is no basis for a person to be in court in the first place”.

In **Advocates for Natural Resources Governance & Development & 2 Ors v Attorney General & Anor Constitutional Petition No. 40/2013** the Constitutional Court held that:-

“Where therefore, as in this case, the petitioner is not a natural person, that petitioner is in our view required to satisfy this Court that, that petitioner is a person within the meaning of Article 137... the affidavit says nothing about the capacity of the 1st Respondent to bring this petition. One would have expected to find attached thereon its NGO Certificate and if a company limited by guarantee, its Certificate of Incorporation and Registration. It

cannot be ascertained from the petition and the accompanying affidavit whether or not the “petitioner is a person capable of bringing their petition. We are alive to the fact that the capacity of the “petitioner was not put in issue by any of the respondents in their pleadings. However, that does not mean that the capacity of the “petitioner is admitted or has been proved. That was incumbent upon the petitioner to prove...the fact that the respondents did not challenge the capacity of the “petitioner to bring this petition does not mean that the capacity of the petitioner was proved. We find that the capacity of the petitioner to bring this petition as a person has not been proved. We accordingly strike out the F petitioner as a party to this petition”.

In other words, that the Respondent not being a natural person must prove its capacity to bring legal action by attaching to its pleadings its certificate of incorporation at the time of filing the suit, and where that is not done like in the instant case, the capacity to bring the action is not proved and the action is struck out.

They therefore submitted that the same should hold true of the Respondent in the Head Suit (**NO. 17/2021**), it was the holding of Eva K. Luswata J (as she then was) in **Amritlal Mehta Kunjlata Panchasra & Anor v Sakina waziri & 4 ORS** at page 5 of her Ruling that *“In my view, a plaintiff can enjoy a right only if they have legal standing or locus standi to bring a suit because, locus standi is extrinsically linked to a cause of action...Locus standi is defined in **Black's Law Dictionary** to be “...the right to bring an action or to be heard in a given forum”, in this case, this Court. **See Black's Law Dictionary 10h Ed pg. 1084.** Thus, those with hypothetical or abstract issues cannot be said to have or to enjoy rights to sue.*

Finally, that in **Crane Bank Ltd [In Receivership v Sudhir Ruparelia & Anor CACA No. 252/2019]**, it was held at page 12 of the Judgment that, *“We respectfully disagree with the appellant that if a pleading does not disclose a cause of action or locus standi. The courts should still inquire into the merits of the main case. This would be an action in futility. The courts are not meant to award moot judgments. If a person has no locus standi; or cause of action, then the merits of the case cannot be inquired into lest the court might end up condemning a party who should not have been condemned”.*

They subscribed to the principle above as enunciated by the Court of Appeal and which legal principle is binding on the High Court per the doctrine of precedent.

They added that the orders granted by this court in **HCCA No. 115 of 2015 and High Court Miscellaneous Application No. 211 of 2020** bind the Respondent in in as far as same were delivered against Steel Rolling Mills Ltd from whom the Respondent purportedly derived its title by the impugned purchase and transfer of title to the suit property.

That the legal implication herein under **Section 7 of the Civil Procedure Act** is underscored in the fact that the Decree/Order in **Civil Appeal No. 115 of 2015** and those in **Miscellaneous Application No. 211 of 2020** are binding on the Respondent herein. This is well expressed in the Latin maxim *Qui facit per alium facit per se* which is translated to mean that He who does a thing through another does it himself or He who acts through another acts himself.

Consequently, they argued that the current suit by the Respondent (**HCCS NO. 17/2021**) was filed in breach of the law and therefore illegal and that has been brought to the attention of Court by the Applicants in the instant Application which fact this Court cannot sanction as per ***Makula International Ltd v His Eminence Cardinal Nsubuga & Anor [1982] HCB 11.***

They prayed that the Court be pleased to allow the Application, strike out the Complaint and dismiss **HCCS NO. 17 of 2021** with costs to the Applicants for the reasons given herein above.

In reply, it was submitted by counsel for the Respondent that the Application before court is brought under **Section 98 of the CPA, Section 33 of the Judicature Act, Order 6 rules 28, 29 & 30, Order 7 rule 11 and Order 52 rules 1, 2 & 3 of the Civil Procedure Rules**. It seeks for orders that:- **HCCS No. 17 of 2021; Lukongo Cotton Company Ltd-vs-Hard Rock Quarry (U) Limited & Anor** is unmaintainable in law for being founded on illegalities and should be rejected, struck out and/or be dismissed; the Respondent herein has no *locus standi* to bring **HCCS No. 17 of 2021** against the Applicant: The Respondent's suit **HCCS No. 17 of 2021** as against the Applicant be rejected, struck out and/or dismissed for failure to disclose a cause of action against the Applicant; the Respondent's suit in **HCCS No. 17 of 2021** is *res judicata* and this Honourable court is *functus officio* and Costs of the Application.

The Respondent opposed the Application and its reasons against the Application are contained in the Respondent's Affidavit in Reply deponed by Bharati Thummar specifically Para.3-19, but briefly that the Respondent

Company is the registered proprietor of land comprised in LRV. JJA414 Folio 22 Plot 68-72 at Masese Jinja (*herein after referred to as the "suit property"*) having been registered on the Certificate of Title of the said land under Inst. No.JJA 00021756 on the 5th day of August 2020 and that High Court suit in **HCCS No. 17 of 2021** was instituted to highlight the Applicant's fraud exhibited in obtaining the Order in **HCMA No. 2011**.

They submitted that it's a cardinal principle of the law that where there is an allegation of fraud and/or an illegality in anything the only remedy available in law is by instituting a full suit, the same can never be remedied by/through an application.

That the above principle is buttressed by Court in **A.V. Papayya Sastry & Others vs Government of A.P & ors Case No. Appeal (Civil) 5097-5099 of 2004 (Supreme Court of India)** which decision was cited with approval by Justice Eva K Luswata in one of her decisions/Judgment in the case of **Mugisha Florence vs. Babirye Florence and 3 ors HCCS No.22 of 2014** where she stated that;

"it is thus a settled proposition of law that a Judgment, decree or order obtained by playing fraud on the court tribunal or authority is a nullity and non est in the eye of the law. Such Judgment, decree or order by the final court has to be treated as nullity by every court, Superior or inferior. It can be challenged in any court any time, in appeal, revision, writ or even in collateral proceedings...although a judgment would be res judicata and thus not impeachable from within, it might be impeachable from without. In other words, though it is not permissible to show that the court was mistaken, it might be shown that it was misled. "

That Her Lordship further cited the case of **Jonesco vs Beard (3), [1930] A.C. 298, at p.300**, where court stated that, *"the correct way to challenge an existing decision of the court on the basis of fraud was by a new substantive action."*

They therefore submitted that, the Applicant in paragraphs 2 and 3 of its Affidavit in Support of this Application acknowledges that the Respondent sued the Applicant in **Civil Suit No.017 of 2021** claiming interest as the registered proprietor of the suit land and that the Applicant denies the Respondent's said interest since it's (Applicant) the owner of the same by virtue of an Order delivered by Court in **HCMA No. 211/2020**.

That the Applicant in paragraphs 8 and 9 of the same Affidavit further informs this Honorable Court that the transaction in which the Respondent

Company acquired the land was illegal, null and void since it was concluded in 2018 whilst there was still a pending **Appeal (No.115/2015)** regarding the suit property and that a Ruling in **HCMA No.211/2020**, a suit that was filed two years after the said purported sale (which it is now clear the Applicant was aware of) declared that the said suit property and land comprised in LRV JJ/0346 FOLIO 7 PLOT 68-72 Land at Masese, Jinja City were one and the same.

They argued that the above applicant's statements confirm two positions which can only be determined and/resolved by leading evidence in a suit: one, that there are two conflicting interests on the same land and two that there is an alleged "illegality" which requires particular mention in pleadings and strict proof. That this alone renders this whole application untenable in law and basis for the same to be dismissed for this Honourable Court to hear **Civil Suit No.17 of 2021** and determine the said questions/issues since the same as submitted above can only be determined through a suit.

Without prejudice to the above, they further submitted that the Respondent is the only true registered owner of the suit property and **HCMA No.211 of 2020** that allegedly declared the Applicant as an owner was obtained by the Applicant fraudulently through concealing important information from Court as shall be submitted hereunder.

That the Applicant in its response to **HCMA No. 05 of 2021** filed by the respondent herein seeing to vacate the Applicant's caveat on its (respondent's) land comprised in LRV. JJA414 Folio 22 Plot 68-72 never attached any documents regarding the said caveat and when the same came for mention on the 5th day of May 2021, fraudulently concealed information that it had preferred **HCMA No.211 of 2020; Hard Rock Quarry (U) Ltd-VS-Commissioner Land Registration & Steel Rolling Mills Ltd** which had the effect of having the Respondent's name cancelled and replaced by the Applicant's name on suit property.

They further invited court to look at the Applicant's pleadings in **HCMA No.211 of 2020**; and will agree with them that indeed it was fraud at its best. That in its said pleadings, (which were not served on any of the Respondents therein), the applicant did not inform court that the Certificate of Title for land comprised LRV. JJA414 Folio 22 Plot 68-72 at Masese Jinja that it sought to have its name registered onto was not registered in the Respondents names (Steel Rolling Mills Ltd), information that was useful in determining the said Application.

Further, that at the time the applicant preferred **HCMA No.211 of 2020; Hard Rock Quarry (U) Ltd-vs-Commissioner Land Registration & Steel Rolling Mills Ltd**, it was aware that the Respondent was the registered proprietor and had possession of land comprised in LRV. JJA414 Folio 22 Plot 68-72 at Masese Jinja but decided to conceal this information and never informed court about the same.

That this is proved in their submissions when counsel for the Applicant therein prayed that court should make an order that would cover any third party interests that may have been registered on the Title after the Judge's Order, a prayer that Her Lordship denied at the time on grounds that cancellation of a title would require a full suit, in which allegations of fraud, illegality and connivance would require particular mention in the pleadings and strict proof. **See page.9 of the Ruling of the said Application.**

That it's also worth noting that the ruling in **HCMA No. 211 of 2020** that sought to divest the Respondent of its propriety interest in land comprised in LRV. JJA414 Folio 22 Plot 68-72 at Masese Jinja without it having been part of the same and/or according it a hearing (fair trial) was delivered on the 18th day of May 2021 while **HCMC No. 05 of 2021** was still pending determination by the court without having all the relevant facts as to the proprietorship of land comprised in LRV. JJA414 Folio 22 Plot 68-72 at Masese Jinja and also according the Plaintiff a hearing (fair trial) to defend its interests in the said property.

The Respondent thus having been aggrieved by the said decision in **HCMA No. 21| of 2020** where it was not a party and the fact that the same was obtained through fraud had only one remedy of instituting a suit to wit; **HCCS No. 17 of 2021.**

That during scheduling after **HCCS No. 17 of 2021** was consolidated with **HCMC No. 05 of 2020**, the matters raised herein were set out as issues for determination by the court, hence we have failed see the relevancy of this application; and invited Court to look at the Joint Scheduling Memorandum and will confirm the same. That this to them proves that this application is a waste of court's time, only intended to delay the main suit and ought to be dismissed.

In addition, that the Applicants in their submissions sought to argue that the averments contained in its Affidavit in Support of its Application were uncontroverted and as such the application should be considered unchallenged and cited a number of authorities in support; and submitted

that the Respondent's Affidavit in Reply does not in any way amount to admission.

Secondly, that the Applicant's submission, authorities cited and prayer in this regard is made out of context since the nature of this Application is one premised on law and on information/advice by the lawyer as seen from the Notice of Motion itself and the Affidavit in Support thereto which by implication makes the averments therein not factual but legal such as, *Locus standi*, Cause of action, *Res judicata* and as such it is for the Court to determine and/or interpret whether the same are correct and thus doesn't amount to an admission on the part of the respondent.

Further still, that it would have been helpful if the Applicant had highlighted a specific paragraph that lacks a specific response thereto and would amount to an admission on the part of the Respondent.

Further on the issue of *Res judicata* that **HCMC No. 05 of 2021 Consolidated with HCCS No. 17 of 2021; Lukonge Cotton Company Limited-vs-Hard Rock Quarry (U) Limited & Another** is not barred by *res judicata* and *functus officio*. The Respondent's **HCCS No. 17 of 2021** seeks for various declarations and it is premised on three causes of action, which are covered by the issues raised in the joint scheduling memorandum already highlighted herein above for determination by the court as, namely: Fraud, Illegality, and Lack of fair hearing and we submit that any suit premised on the above causes of action is not barred by the plea of *res judicata* as submitted below;

That the Supreme Court of Uganda in the case of ***F.J.K Zaabwe v. Orient Bank & 5 Ors, S.C.C.A.No. 4 of 2006 (at page 28 of the lead Judgment)*** relying **Black's Law Dictionary, (6th Ed) at page 660**, defined fraud to mean;

"An intentional perversion of truth for purposes of inducing another in reliance upon it to part with some valuable thing belonging to him or to surrender a legal right. A false representation of a matter of fact, whether by words or by conduct, by false or misleading allegations or by concealment of that which deceives and is intended to deceive another so that he shall act upon it to his legal injury..."

That it is trite law that a judgment, decree or order obtained by playing fraud on the court, tribunal or authority is a nullity and can be challenged in any court at any time on appeal, revision, or even in collateral proceedings; and relied on ***Mugisha Florence-vs-Babirye Florence (Supra)***.

That they have submitted and shown above that the Applicant committed fraud by concealing information when obtaining the Order in **HCMA No. 211 of 2020** a fact that resulted into the filing of **HCCS No. 17 of 2021**; and thus the same cannot be treated as *res judicata* and we submitted that the said **Ruling (HCMA No. 211 of 2020)** cannot raise the plea of *res judicata* since the same was obtained through fraud.

On the issue of illegality, they submitted that the Orders of Court in **HCMA No. 211 of 2021** that is the premise for the Applicant to claim Ownership of land comprised in LRV. JJA4]4 Folio 22 Plot 68-72 at Masese Jinia are illegal and the same cannot be the basis for the plea of *res judicata*; and in determining the same implored the Court to look into and determine the questions highlighted below.

"What happens upon a court pronouncing Judgment?"

They therefore submitted that upon court entering Judgment, the party in whose favour judgment is pronounced and/or entered should apply before the court to enforce the orders so granted in its favour by way of execution proceedings.

2. *"Did the applicant apply for execution of the Judgment or Orders in **HCCA No. 115 of 2015?**"*

In respect of the above, they submitted that the Applicant did not apply for execution of the Orders so issued in **HCCA. No. 115 of 2015**, but instead filed the said **H.C.M.A No. 211 of 2020**. That **Section 34 (1) of the Civil Procedure Act cap 71** provides that; *"All questions arising between the parties to the suit in which the decree was passed or their representatives, and relating to the execution, discharge, or satisfaction of the decree, shall be determined by the court executing the decree and not by a separate suit"*. (Emphasis added for the underlined parts).

That **Section 2 (x) & (q) of the Civil Procedure Act Cap 71** defines a suit to mean civil proceedings commenced in any manner prescribed by the rules.

They submitted that since **HCMA No. 211 of 2020** was not any execution proceeding, but rather a suit as defined above is prohibited by the said **Section 34** that is couched in mandatory terms hence making it and the Orders arising therefrom illegal and not a basis of the plea of *res judicata*.

That it is trite law that a court of law cannot sanction an illegality and once brought to the attention of court, it overrides all questions of pleadings,

including any admission made thereon; and referred to the case of ***Makula International Ltd v. His Eminence Cardinal Nsubuga & Another [1 982] HCB***; thus the said order being illegal is unenforceable in law and cannot be used as against the Respondent who was not a party to the same and the only remedy available to file a fresh suit which the respondent did.

Before they left this point, they categorically stated that their **Civil Suit No. 17 of 2021** which is a result of this application is only and only premised on Orders obtained in **HCMA No. 211 of 2020** and never on Orders obtained in **Civil Appeal No. 115 of 2015** as stated by the Applicant in their submissions and thus makes their submissions on the same inconsequential.

They also submitted that the Respondent was not accorded a fair hearing by the court when the Orders of Court that the Applicant seeks to rely on were obtained from the court.

That as submitted earlier/above, the Applicants have always been aware of the Respondent's interest in the suit land and they choose to determine that the Respondent has no interest in the suit land by not according a fair hearing. **See page.9 of the Ruling of the said Application.**

That the applicant's defence for not according the Respondent a fair hearing is that the Applicant acquired the property illegally. This would lead to the question of "*who determines whether the Respondent is a legitimate owner or not of the suit property.*"

They therefore submitted that it is not the preserve of the Applicant to determine that the Respondent is a legitimate owner or not of the suit property but a preserve of the court and the court can only do this through a full suit and not a mere application.

That according to **Article 28 and 44 (c) of the Constitution**, the right to a fair hearing is non derogable and more so, where it involves proprietary rights. It does not matter in law that a fair hearing would have made no difference to the petitioner's case. They referred to the case of ***Haji Numan Mubiakulamusa-vs-Friends Estates Limited CACA No. 209 of 2013 (Unreported)*** that cited with approval the decision in ***Medical Council- vs- Spackman [1943] A.C. 627*** where it was held that:-

"If principals of natural justice are involved, it is indeed immaterial whether the same decision would have been arrived at in the absence of the departure from the essential principles of justice. The decision must be declared to be no decision at all."

They submitted that the Respondent's suit discloses a cause of action. That a cause of action has been defined by the courts of law in several matters to mean that a party had a right, the right was infringed upon and that damage arose for the infringement.

As to how a cause of action arises in land matters is so elementary that they wish not take this court on the expedition of determining whether this suit has a cause of action or not; however, briefly in regard to the Respondent's cause of action referred the court to the Respondent's Affidavit in Reply specifically para 3, 4 and 5 which confirms that the Respondent is the legal owner of the suit land, the Applicant lodged a caveat on the same which hindered him from Using the said land/enjoying its rights.

That the Respondent has *locus standi* to institute **HCOCS No. 17 of 2021**. The Respondent as an owner and registered proprietor of land comprised in LRV. JJA414 Folio 22 Plot 68-72 at Masese Jinja who is possession of the same is clothed with *locus standi* to challenge any decision and/or action that affect his ownership in the suit land; and are at a loss establishing the applicant's argument regarding the respondent's *locus standi* since in their own pleading and submission herein they confirm that the Respondent is the registered proprietor of the suit land and that they lodged a caveat on the suit land.

That in light of the facts and the authorities cited above, they submitted that the Respondent has *locus standi* to institute **Civil Suit No.17 of 2021**, the same discloses a cause of action against the Applicant and it's not *res judicata* and since the Respondent is the registered proprietor of the suit land and the same is being claimed by the applicant through an order in **HCMA No. 211 of 2020**, the Respondent cannot sit on its rights but to challenge the same through the appropriate remedy which is instituting the said civil suit.

In rejoinder, learned counsel for the Applicant joined issue with the Respondent in its submissions in Reply and reiterated its main submissions in the instant Application; and that it must also be stated from the onset here that the Respondent has not addressed the points of law raised in the Application and canvassed in their main submissions to the effect that the Court is *functus officio* since it already determined the status of the ownership of the suit property in **HCCA No. 115/2015** when it directed the Commissioner Land Registration to reinstate the Applicant on the Certificate of Title.

That **HCMA 211/2020** simply confirmed that LRV JJA/414 Folio 22 Plot 68-72 Masese Jinja is the same land described as LRV JJ/O346 Folio 7 Plot 68-72 Masese Jinja.

They further argued that the Respondent cited the authority of **Mugisha Florence vs Babirye Florence & 3 ors HCCS No. 22/2014** in a bid to buttress the unfounded allegation of fraud on the part of the Applicant in obtaining the Orders in **HCMA 211/2020**.

They therefore submitted that this case is not applicable to the instant Application as there is no apparent fraud alleged in the pleadings. The Respondent albeit unsuccessfully is attempting to mislead Court by twisting the facts leading to the filing and decision in **HCMA 211/2020**, which in fact was limited to clarification of the description of the suit land by way of review so that the orders given by this Court in **HCCA No. 115/2015** were not in vain. This did not call for the disclosures alluded to by the Respondent and as such submitted that there was no fraud apparent in the said Application for review of **HCCA No.115/2015**, a condition mentioned in the authority cited.

That there are no instances of fraud in the Plaint, Affidavit in Reply to the instant Application or even in the proceedings in the said Application leading to the Ruling and Order of this Court in **HCMA 211/2020**; no issues of fraud and/or misrepresentation emanating from the Order in **HCMA No. 211/2020** are apparent; therefore the Respondent cannot rely on fraud to challenge a standing decision of this Court in this same Court and indeed the decision of this Court is *res judicata* and unimpeachable from within.

That there must be finality to litigation; and the Constitutional Court in **Goodman Agencies v Attorney General & Anor. Constitutional Petition No. 3/2008** held that:-

"The functus officio rule encapsulates the general principle that the Court passing Judgment or decree cannot revisit the Judgment or purport to exercise a judicial power over the same matter".

In effect, that this Court already determined the status of the suit land and it cannot revisit the same by issuing another Order in **HCCS No. 017/2021** as it is being asked by the Respondent. That in **Judith Rwakishumba & Anor v Sikh Saw Mills & Ginnors Ltd CA Civil Application No. 182/2021**, the Court of Appeal held that *"the Court cannot grant an Order which would in effect condone contempt or disregard of the Orders of the trial Court."*

That in the instant case, this Court as the trial Court has already ordered that the Applicant be reinstated on the Certificate of Title to the suit land. The Respondent in **Civil Suit No. 17/2021** is indirectly asking the very Court which issued the Order of reinstatement to condone contempt of its own Orders as a trial Court and in effect contradict itself.

Further, that the Orders of this Court flowing from **HCCA No. 115/2015** and **HCMA 211/2020** are Orders in REM and bind everybody whether a party to the suit in which they were made or not. That in the case of **Samuel N Kamau vs Allan Lzukas & Ors HCMA 250 of 2021**, it was held that:-

"A court order is an Order in rem. It is an Order against the whole World. Once issued, a court Order binds all the parties and everyone in respect the subject matter under litigation."

That the same applies to the instant case where this Court issued Orders in respect of the subject matter (the suit land) under litigation in **HCCS No.17/2021**.

On the ground of the case (**HCCS No.17/2021**) being *Res Judicata*, the Respondent made a half-hearted cursory response to this point of law raised by the Applicant by simply stating that it is not barred. That as far as the law is concerned, the court already determined the status of the suit land. They relied on **Ismail Karshe v Uganda Transport Co. Ltd HCCS NO. 553/1966 reported in (1967) EA 774**, where it was held by Sir Udo Udoma CJ (as he then was) that *"once a decision has been given by a court of competent jurisdiction between two persons on the same subject matter, neither of the parties would be allowed to re-litigate the issue again or to deny that a decision had in fact been given, subject to certain conditions."*

Therefore, since the Respondent derives its claim to the suit land from Steel Rolling Mills Ltd, it cannot re-litigate over the same subject matter.

Further, that what the Respondent has done in the main suit (**HCCS NO. 017/2021**) is simply to make itself a party (Plaintiff) and to add other causes of action and seeking declarations thereto. They submitted that this will not save its impugned suit because in **Omondi v National Bank of Kenya Ltd & Ors (2001)1 EA 177** it was held that *"parties cannot evade the doctrine of res judicata by merely adding other parties or causes of action in a subsequent suit."*

And they invited this Court to adopt the reasoning in the cited authority.

On *Locus standi*, that the Respondent never addressed this point of law in its reply, and the Applicant reiterates its position in the main submissions and the holding of Andrew Bashaija J. in ***Fakrudin Vallibhai Kapasi & Anor v Kampala District Land Board & Anor HCCS NO.570/2015*** that:-

"the omission to accompany documents with the legal authority upon which the party derives the locus in a suit at the time of filing such documents is a fatal omission."

They submitted that the Respondent being an artificial person ought to have attached its Certificate of Incorporation to its Complaint in **HCCS No. 017/2021** at the time of filing the said suit in 2021, since it did not do so, it has no *locus standi* as far as the impugned suit is concerned. That *locus standi* has been defined in ***Wafula Charles v Atzin Amirali Allibhai Pradhan & 5 Ors HCCS No. 2008/2014*** cited with approval in ***Nuru Hassan Shariff vs The Administrator of the Estate of the Late Shamji Jamal Lakan*** thus; *"..... the right that one has to be heard in a court of law or other appropriate proceedings"*.

On the strength of the above authorities, they submitted that the Respondent has no *locus standi* to bring **HCCS NO. 017/2021** and by extension no cause of action since the two are intrinsically intertwined as put in their main written submissions. That where court makes a finding that the Respondent has no *locus standi*, it cannot enquire into the merits of the suit as per ***Crane Bank Ltd (In Receivership) v Sudhir Ruparelia & Anor CACA No. 252/2019***.

The Applicants also maintained that the Respondent has no interest in the suit land because of the manner in which it acquired the same by breaching **section 91 (11) of the Land Act Cap 227** which prohibits transfer of title by the party in whose favour the cancellation of title has been effected by the Commissioner Land Registration, until the expiry of the time within which an appeal may be lodged, and where an appeal is lodged against the cancellation, he or she shall not transfer the title until the determination of the Appeal.

That a transfer of title has been held to be part and parcel of a sale as was Held in ***Re: Ivan Mutaka (1980) HCB 27*** in Holding No. 9 thus;

"Sale, imports the idea of a transfer of a right of property in consideration of money....."

They relied on **Black's Law Dictionary, 8th Edition at Page 1364** which defines a sale as *"(i) the transfer of property or title for a price, (ii) the agreement by which a transfer takes place"*.

That in **Active Automobile & Anor v Crane Bank & Anor SCCA NO. 21/2001** the Supreme Court Held that *"it is trite law that any agreement entered in contravention of the law is null and void."*

That this in relation to the instant case means that the purported agreement of sale of the suit land by Steel Rolling Mills to the respondent in 2018 and the subsequent transfer in 2020 were illegal, null and void and did not in effect confer any title/interest on the Respondent. That in **Kyagalanyi Coffee Ltd v Francis Senabulya CACA No. 41/2006**, while handling a similar a similar scenario, it was Held by the Court of Appeal that:-

"Acting in disregard of that mandatory requirement of the law, as the Appellant did, rendered the transaction an illegality."

"Any illegality once brought to the attention of Court cannot be sanctioned or tolerated by a court of law"

On the strength of the above legal provision and its mandatory spirit enunciated in the foregoing authorities, they submitted that the Respondent having purchased the suit land while there was a pending appeal, and transferred the same after this Court's Order of reinstatement of the Applicant on the title in **HCCA No. 115/2015**, a decree of which was served on the Commissioner Land Registration and steel Rolling Mills Ltd from whom the Respondent purportedly derived its title, committed an illegality which cannot be left to stand.

That in essence, the Respondent didn't acquire any legal title or interest at all to the suit land and as such has no cause of action to bring **Civil Suit No.017/2021**.

In rejoinder to the Respondent's submission that the only remedy to an allegation of illegality is institution of a full suit, they submitted that the illegality herein emanates from flouting provisions of the law and does not require calling evidence since it is this same court that sat in and decided **HCCA No. 115/2015** which was revised in **HCMA 211/2020**. That it is false and misleading for the respondent to state that the Applicant's ownership of the suit land was decided in **HCMA 211/2020** which in fact only sought clarification of the description of the suit land after the decision in **HCCA No. 115/2015**.

Further, that under **Order 6 rule 3 of the Civil Procedure Rules**, it is only where a pleading relies on misrepresentation, fraud, breach of trust, willful default or undue influence that particulars are required to be stated in the pleadings. Matters of illegality do not require particularization as is alleged in the Respondent's submissions.

That this alone shows that there is no competing interest to that of the Applicant herein as ordered by this Honorable Court, and the same is pending execution by reinstating the Applicant on the certificate of title.

Further, that the crux of this Application is that it is premised on Points of Law. It is trite that points of law can be raised at any time before judgment and one need not call evidence to prove points of law. That Court looks at the Pleadings and attachments and need not call any extraneous evidence to prove the Points of Law. The grounds/points of law canvassed in this Application are;

- i. This court is *functus officio*.
- ii. The suit is *res judicata*.
- iii. The Respondent has no *locus standi* and no cause of action.

That the grounds above have not been controverted by the Respondent both in the pleadings and their submissions which as stated in their main submissions amounts to an admission. In ***Sam Kaggwa v Beatrice Nakityo (2001-2005)2 HCB 118*** it was held in Holding No. 4 that:-

"where averments made by a party are neither denied nor rebutted by the opposite party, the presumption is that they were admitted by that party as true facts."

They accordingly prayed that the suit be struck out with costs to the Applicant.

I have carefully analyzed the Preliminary Points of Law raised above and taken into account the lengthy submissions of both sides. I have also taken time to examine the related files to this matter.

To me the following is the main issue to be determined:-

Issue: Whether the Respondent's suit (HCCS No.017/2021) is not maintainable in law for being barred by law (res-judicata); and should be rejected, struck out and/or dismissed?

In resolving this issue, the principle of *res-judicata* is contained in **Section 7 of the Civil Procedure Act** which provides that;-

“No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try the subsequent suit or the suit in which the issue has been subsequently raised, and has been heard and finally decided by that Court.”

The principles relating to the doctrine have been enunciated in example in the case of **Ganatra vs. Ganatra [2007] 1 EA 76 at P 82** where it was held that:-

“...for res judicata to be established, three conditions have to be fulfilled. Firstly, that there was a former suit or proceedings in which the same parties as in the subsequent suit or proceedings was litigated. Secondly, that the matter in issue in the later suit must have been directly and substantially in issue in the former suit. Thirdly, that a court competent to try it had heard and finally decided the matters in controversy between the parties in the former suit...”

For the purposes of this suit, that test should be read subject to the explanations in **Section 7 of the Civil Procedure Act [CPA]**. To simplify the above provision, under **Section 7 (supra)**, for a claim for *res judicata* to succeed, the Applicant must prove that:-

- a) The same parties litigating in the former suit should be the same parties litigating in the latter suit or parties under whom they or any of them claim
- b) A final decision on the merits has been given in the former suit by a competent court
- c) The suit or its subject matter must have been directly or substantially in issue in a former suit
- d) The parties should be litigating under the same title
- e) The earlier suit must have been decided by a competent court and that court fully resolved the dispute.

The test applicable in determining as to whether a case is barred by the doctrine of *res judicata* was stated in **Ponsiyano Semakula Susan Magala & Others [1979] HCB 89** quoted with approval in **Kafeero Sentongo vs. Shell (U) Ltd. & Uganda Petroleum Co. Ltd. CAC Appl. No. 50 of 2003 & Kizza & Anor v Kalala & 4 Ors (CIVIL SUIT NO. 151 OF 2004)**, that;

“In determining whether or not the suit is barred by res judicata, the test is whether the plaintiff in the second suit is trying to bring before the court in

another way in a form of a new cause of action, a transaction which he has already been presented before the court of competent jurisdiction in earlier proceedings which have been adjudicated upon.”

In the instant case, after a careful examination of all the matters related to the current suit, it is clear that **Civil Suit No.17 of 2021** is touching issues of ownership of the suit property vide LRV JJA 414 Folio 22 Plots 68-72 land at Masese which seems to have been double plotted and described again as LRV 0346 Vol. JJA 74 Folio 7 Plots 68-72 Block Industrial Estate Masese Jinja.

As to whether the matters directly and substantially in issue were directly and substantially in issue in a former suit, vide **Civil Appeal No. 115 of 2015** at **High Court in Jinja Vide Hard Rock Quarry(U) Ltd vs Commissioner land Registration & Steel Rolling Mills** where the Applicant herein sought to set aside a decision of the Commissioner Land Registration and have them re-instated as registered proprietor of the suit land comprised in LRV 0346 Vol. JJA 74 Folio 7 Plots 68-72 Jinja Municipality, a critical examination of the records of the above stated files reveals that the decision rendered by this Honourable Court in **Civil Appeal No.115 of 2015** as to the ownership of the suit property was substantially in issue in **Civil Appeal No.115 of 2015**.

The above confirms to me that this was substantially in issue in a former suit where the same Court decreed and ordered to reinstate the Applicant as the registered proprietor of land comprised in LRV 0346 Vol. JJA 74 Folio 7 Plots 68-72 Jinja Municipality, Block Industrial Estate.

I agree with learned counsel for the Applicant on that.

Secondly, under the second component that the suit must be between the same parties or under whom they or any of them claims and the parties must have been litigating under the same title in the same suit. This was the position taken in the case of **Gokaldas Lixilidas Tanna vs Sister Rose Muyinza, HCCS No.707 of 1987**.

In the instant case, an examination of the previous records confirms that the Respondent herein purported to buy the suit land from Steel Rolling Mills Ltd while there was a pending **Appeal (No. 115/2015)** before this Honourable Court between the Applicant and Steel Rolling Mills Ltd which then sold the suit land to the Respondent, hence assuming the impugned title to the suit land and securing a Certificate of Title, and therefore, the Respondent brought **Civil Suit No.17 of 2021** for ownership claiming under Steel Rolling Mills the 2nd Defendant in **Civil Appeal No.115 of 2015**.

In the said Appeal, the Commissioner Land Registration was ultimately heard and it was decided in favour of the Applicant herein with Orders for its reinstatement on the suit land as Proprietor thereof.

I'm therefore more inclined to agree with learned counsel for Applicant on that as well.

In addition, I also recognize, that the transaction between the Respondent herein and Steel Rolling Mills whilst the Appeal was pending, made the said transaction void and incapable of vesting any interest in the land unto the Respondent since any land transactions undertaken in breach of a statutory provision creates no interest in land. In this case, Steel Rolling Mills Ltd purported to sell to the Respondent what it did not lawfully/legally own at the time. Consequently, this interprets that a person cannot grant a greater interest than he or she possesses; and I find the decision in ***Erina Lam Oto Ongom v Opoka Bosco & anor HCCA No. 0091/2019*** as cited by the learned counsel for the Applicant persuasive.

Thirdly, for the Applicant to prove that the instant suit is barred by the doctrine of *res judicata*, it must be proved that the Court trying the former suit must have been a Court of competent jurisdiction to do so. ***See: John William Kahuka & Others vs. Personal Representative of Rt. Rev. Eric Sabiti (1995) V KALR 79.***

In the instant case **Civil Appeal No.115 of 2015** was heard and determined by my sister Judge the Hon. Lady Justice Eva .K. Luswata (as she then was) and Judgment therein was delivered on the 8/5/2020 whereby she set aside the decision of the Commissioner Land Registration dated 16th September 2015 and 1st October 2015; and also ordered the Commissioner Land Registration to reinstate the Applicant as the Registered proprietor of land comprised in **LRV JJ/0346 Volume JJA 74 Folio 7 Plot 68-72 Jinja Municipality, Block Industrial Estate** (the suit land).

Fourthly, the matters directly and substantially in issue must have been heard and finally determined which has already been discussed above.

In the instant, case, I have found that the matters in those respective cases were heard by a court of competent jurisdiction, were heard and finally determined.

In conclusion, I cannot but find that the instant case squarely covers the situation on all fours under **Section 7 of the CPA**. The Court in the former suit having found that the Applicant be reinstated as the Registered

Proprietor of land comprised in **LRV JJ/0346 Volume JJA 74 Folio 7 Plot 68-72 Jinja Municipality, Block Industrial Estate**, the issue cannot be tried and pronounced upon twice by the same Court.

Furthermore, it is in no doubt that the present suit is between the same parties or parties, “*under whom they or any of them claims and the parties are litigating under the same title in the same suit*”, as in the former suit. The Applicant in the present suit was the Appellant in the former suit litigating as owners of the suit land from Commissioner Land Registration as the 1st Respondent and Steel Rolling Mills Ltd, the 2nd Respondent from whom the Plaintiff (in the instant Application Respondent) in **Civil Suit No.17 of 2021** derived its claim. It is also without a doubt that the Court that heard and determined the former suit was a Court of competent jurisdiction to do so.

I therefore, find that there is nothing for this Court to determine anymore in respect of the issues involved in those cases.

Having determined the issue of *Res Judicata*, I see no need not labour to discuss whether the Respondent has a cause of action against the Applicant in **Civil Suit No.17/2021**.

Finally, under **section 27 (1) of the CPA**, it is now well established law that costs generally follow the event. See ***Francis Butagira vs. Deborah Mukasa Civil Appeal No. 6 of 1989 (SC)*** and ***Uganda Development Bank vs. Muganga Construction Company (1981) HCB 35***. Indeed, in the case of ***Sutherland vs. Canada (Attorney General) 2008 BCCA 27*** it was held that courts should not depart from this rule except in special circumstances, as a successful litigant has a ‘reasonable expectation’ of obtaining an order for costs.

In the instant Application, the Applicants have succeeded on the Preliminary Points of Law, and I find no compelling and or justifiable reason to deny them costs. Accordingly, they are awarded full costs in this case.

In the final analysis, taking into account all my findings and decisions in this Ruling, this whole Application is resolved in favor of the Applicants with the following Orders:-

1. **Civil Suit No. 17/2021; Lukonge Cotton Company vs Hard Rock Quarry (U) Ltd & Commissioner Land Registration** is found to be unmaintainable in law for being founded on illegalities and is hereby dismissed.

2. The Respondent herein has no *locus standi* to bring **High Court Civil Suit No. 017/2021** against the Applicant.
3. The Respondent's suit in **HCCS No. 017/2021** as against the Applicant is hereby dismissed for failure to disclose a cause of action against the Applicant.
4. The Respondents suit in **HCCS No.017/2021** is *res judicata* and this Court being *functus officio*.
5. Costs are awarded to the Applicants.

I SO ORDER

JUSTICE DR. WINIFRED N NABISINDE
JUDGE
28/02/2024

This Ruling shall be delivered by the Magistrate Grade 1 attached to the chambers of the Resident Judge of the High Court Jinja who shall also explain the right to seek leave of appeal against this Ruling to the Court of Appeal of Uganda.

JUSTICE DR. WINIFRED N NABISINDE
JUDGE
28/02/2024