

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
LAND DIVISION**

CIVIL SUIT NO. 1169 OF 2021

**1. CHRISTOPHER MUBIRU
2. GRACE KITAKA
3. IRENE NABAWANUKA
4. IRENE NABITAKA
5. KIWANUKA JOSEPH ::::::::::::::::::::::::::::::::::: PLAINTIFFS**

VERSUS

**1. LENA NAKALEMA BINAISA
2. YOU JING SHU ::::::::::::::::::::::::::::::::::: DEFENDANTS**

BEFORE HON. JUSTICE NAMANYA BERNARD

RULING

1. This Ruling is in respect of preliminary objections raised by counsel for the plaintiffs that:
 1. The defendants filed their written statements of defence outside the time allowed by the law.
 2. The 2nd defendant acquired dual citizenship, which is against the laws of the Republic of Uganda and the Peoples' Republic of China.
2. It is noted that all the parties filed written submissions on the preliminary objections. However, Court notes that counsel for



the 2nd defendant, in his written submissions filed on the 15th August 2022, attached documents as *annexures* for Court's consideration. It is noted that these documents were irregularly introduced, and the same are expunged from Court record.

3. The plaintiffs are represented by *M/s S.K. Kiiza & Co. Advocates*. The 1st defendant is represented by *M/s AF Mpanga Advocates/Bowmans*. The 2nd defendant is represented by *M/s Maldes Advocates*.

Preliminary objection on the late filing of the defendants' Written Statement of Defence (WSD):

4. The plaintiffs' counsel raised a preliminary objection on a point of law on the late filing of the WSD by both defendants. He argues that the WSD was filed out of time in contravention of ***Order 8 rule 1(2)*** of the ***CPR*** which requires a WSD to be filed within 15 days after service of summons.
5. According to counsel for the plaintiffs, the late filing of the WSD without leave of Court, renders them incompetent, and that the same should be struck out. He relied on the case of ***Re Application by Mustapha Ramathan for Orders of Certiorari, Prohibition and Injunction, Civil Appeal No. 25 of 1996***.

6. Counsel for the 1st defendant argued that the preliminary objection is misconceived for miscomputation of the 15 days within which to file a WSD. He argued that since the summons and plaint were served on the 10th December 2021, the 1st defendant's 15 days within which to file a WSD had not yet expired on the 17th January 2022. That the WSD was filed within the time prescribed by the law. That the cumulative effect of **Order 51 rules 3, 4, and 8** of the **CPR** was that the days beginning 24th December 2021, and ending 16th January 2022, both days inclusive, did not form part of the 1st defendant's 15 days for filing a WSD. He relied on the case of ***Shamira Muhammad Morvi v. DFCU Bank Ltd & 3 Others, HCMA No. 1000 of 2018.***
7. Counsel for the 2nd defendant had similar arguments as those of the 1st defendant, and prayed that the preliminary objection be overruled. He relied on the case of ***Uganda Telecom v. Airtel Uganda Ltd, M.A No. 30 of 2011.***
8. I have considered the arguments of both counsel, and I agree with counsel for the defendants, that the days beginning 24th December 2021, and ending 16th January 2022, both days inclusive, did not form part of the defendants' 15 days for filing a WSD. According to Court record, the 1st defendant filed her defence on the 17th January 2022 while the 2nd defendant filed his defence on the 10th January 2022. The result is that the

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defendants' WSD was filed within the 15 days allowed by the law after service of summons.

9. A party that is desirous of being heard cannot be condemned unheard. Even if it were to be found that the defendants filed their WSD outside the time allowed by the law, I would still admit the WSD, pursuant to the discretionary power vested in this Court to enlarge time, under the provisions of **Section 33** of the **Judicature Act (Cap 13)**, **Section 96** of the **CPA** and **Order 51 rule 6** of the **CPR**.
10. Accordingly, the preliminary objection raised by counsel for the plaintiffs on the late filing of the WSD by the defendants is hereby overruled.

Preliminary objection on the 2nd defendant's citizenship:

11. Counsel for the plaintiffs argued that **Section 19 B(2)(a)** of the **Uganda Citizenship and Immigration Control Act (Cap 66 as amended)**, requires a non-citizen to prove that his/her country of origin permits dual citizenship. According to counsel, the laws of China do not permit dual citizenship, and that there is no way, the 2nd defendant could have been granted dual citizenship in Uganda, when his country of origin (China) does not permit dual citizenship. He argued that the 2nd defendant's dual citizenship was unlawfully granted, and ought to be revoked. He further argued that if the 2nd defendant's dual

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citizenship were to be revoked, it would follow that he illegally obtained registration as owner of the suit land.

12. In reply, counsel for the 2nd defendant argued that the 2nd defendant is a Ugandan citizen, and referred to *paragraph 5* of his WSD, where he stated that he became a Ugandan citizen in February 2013 by naturalisation. That nowhere, does he plead that he holds dual citizenship.
13. I agree with counsel for the 2nd defendant, that nowhere in the pleadings, does the 2nd defendant claim that he holds dual citizenship.
14. I have reviewed **annexure D1** to the 2nd defendant's WSD, which is a *Certificate of Registration as a Citizen of Uganda*, where it is stated that the 2nd defendant is a citizen of Uganda, and was declared so, pursuant to **Article 12** of the **Constitution of Uganda (as amended)** and **Section 14(2)** of the **Uganda Citizenship and Immigration Control Act (Cap 66 as amended)**.
15. **Article 12** of the **Constitution of Uganda (as amended)** allows non-citizens to apply for registration as Ugandan citizens. **Article 12(2)** provides that:
“(2) The following persons shall, upon application, be registered as citizens of Uganda—



(a) every person married to a Ugandan citizen upon proof of a legal and subsisting marriage of three years or such other period prescribed by Parliament;
(b) every person who has legally and voluntarily migrated to and has been living in Uganda for at least ten years or such other period prescribed by Parliament;
(c) every person who, on the commencement of this Constitution, has lived in Uganda for at least twenty years.

16. **Section 14(2) of the Uganda Citizenship and Immigration Control Act (Cap 66 as amended)** provides that:

“(2) The following persons shall, upon application, be registered as citizens of Uganda—

(a) every person married to a Ugandan citizen, upon proof of a legal and subsisting marriage of five years or more;
(b) every person who has legally and voluntarily migrated to and has been living in Uganda for at least ten years;
[paragraph (b) substituted by section 4 of Act 5 of 2009]
(c) every person who, on the commencement of the Constitution had lived in Uganda for at least twenty years.”

17. Upon considering **annexure D1** to the 2nd defendant's WSD together the above provisions of the law, I am satisfied that the 2nd defendant is a Ugandan citizen.

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18. Accordingly, I find no merit in the preliminary objection raised by counsel for the plaintiffs, on the 2nd defendant's Ugandan citizenship. It is accordingly overruled.

Costs:

19. The costs of raising these preliminary objections are awarded to the defendants.

I SO ORDER.



NAMANYA BERNARD

Ag. JUDGE

16th September 2022