THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA; AT KAMPALA

(LAND DIVISION)

MISCELLANEOUS APPLICATION No. 398 OF 2014

(Arising from HCCS No. 160 of 2012 – Land Division)

NAKKAZI COTILDA……..... DEFENDANT/APPLICANT

VERSUS

SSEMWANGA BEN……..... PLAINTIFF/RESPONDENT

BEFORE: - THE HON. MR. JUSTICE ALFONSE CHIGAMOY OWINY – DOLLO

RULING

The Applicant, who is the Defendant in the head–suit, has raised a preliminary point of objection, based on two grounds. First, is that the Plaintiff/Respondent has no locus standi (legal capacity) to institute the suit against her. Second, is that he has no cause of action in the suit. She sought for the rejection of the plaint; or dismissal of the suit. The Plaintiff's suit seeks an order for the cancellation of the suit title now registered in the name of the Defendant, whom he alleges transferred it in her name fraudulently. He seeks a reversion of the title to his late father who was the immediate previous registered proprietor.

Ground No. 1: Whether the Plaintiff is competent to bring the head–suit.

The Defendant's contention is that the Plaintiff is neither a holder of letters of administration of his late father's estate, nor a legal representative; and so, he lacks the legal capacity to file a suit in the name of the estate. The Plaintiff has however countered this, relying on the case of ***Israel Kabwa vs Martin Banoba Musinga SCCA No. 52 of 1995*** in which the Court held as follows: –

> *"A beneficiary, who has his/her share of the estate of the deceased has locus to defend his/her own rights to the estate in his/her own right, without necessarily having to first obtain letters of administration to the said estate."*

Accordingly, the Plaintiff contends that since he also has a claim to the suit property, which he accuses the Defendant of fraudulently alienating from the estate, on the authority of the ***Israel Kabwa*** case (supra), he enjoys locus to file the suit to protect or preserve it. The Defendant,

however, contends that the ***Israel Kabwa*** case (supra) was overruled by the decision in ***Dharamsy Murarji & Sons Ltd vs Suman Naresh Kara, SCCA No. 41 of 1995***, which held that no one, who is not a holder of letters of administration of the estate of the deceased person, or legal a representative, has the locus to bring a suit in the name of or with regard to the estate under administration.

I have had the benefit of perusing these two cases. In the former, the suit was not for the administration or management of the estate; but the Plaintiff, as a beneficiary of the estate strictly sought Court's intervention to protect the estate from waste or alienation. The latter suit was brought by a person who, without first obtaining letters of administration, and nor was he a legal representative, sought Court orders to administer the estate. The two cases are certainly distinguishable from each other. In the instant case before me, the Plaintiff has filed the suit as a beneficiary of the estate; but he is not seeking to administer it, but rather, as was the case in the ***Israel Kabwa*** case (supra), to protect or preserve it from waste.

Ground No. 2: Whether the Plaintiffs' plaint should be rejected.

The Defendant/Applicant contends that the Plaintiff has no cause of action, as he is not the only beneficiary of the suit estate. 0.7 r.11 (a) of the Civil Procedure Rules, provides that Court should reject a plaint, where the statement of claim in the suit discloses no cause of action. In ***Auto Garage vs Motokov (No. 3) [1971] E.A. 514,*** at p. 519 Spry V–P held as follows: –

"*if a plaint shows that a Plaintiff enjoyed a right, that the right has been violated and that the Defendant is liable, then, in my opinion, a cause of action has been disclosed and any omission or defect may be cured by amendment."*

In ***Banco Arabe Espanol vs Bank of Uganda – SCCA No. 8 of 1998*** – ODER J.S.C. stated as follows: –

*"As GEORGE C.J. said in **ESSA JI vs SOLANKI [1968] E. A. 218** at 222, the administration of justice should normally require that the substance of all disputes should be investigated and decided on their merits, and that errors **or** lapses should not necessarily debar a litigant from the pursuit of his rights ... It would seem that the main purpose of litigation, namely the hearing and determination of disputes, should be fostered rather than hindered."*

In ***Mulindwa Birimumaso vs Government Central Purchasing Corporation C.A.C.A. No. 3 of 2002***. *(supra)* TWINOMUJUNI J.A. relied on ***Ismail Serugo vs Kampala City Council & Anor.***

– Supreme Court Constitutional Appeal No. 2 of 1998 – in which MULENGA J.S.C. reiterated the law on what amounts to disclosure of a cause of action, as follows: –

"A cause of action in a plaint is said to be disclosed if three essential elements are pleaded; namely, pleadings (i) of existence of the Plaintiff's right, (ii) of violation of that right, and (iii) of the Defendant's liability for that violation. In ***Auto Garage vs Motokov (No. 3) [1971] E. A. 514,*** *at 519 D, after reviewing a line of precedents, SPRY V. P. put it thus: –*

'I would summarise the position as I see (it) by saying that if a plaint shows that the Plaintiff enjoyed a right, that the right has been violated, and that the Defendant is liable, then in my opinion, a cause of action has been disclosed and any omission or defect may be amended. If on the other hand, any of those essentials is missing, no cause of action has been shown and no amendment is permissible.'

A reasonable cause of action on the other hand, has been described as a cause of action which, in light of the pleadings, has some chances of success; see ***Drummond – Jackson vs British Medical Association (1970) W.L.R. 668****."*

The Plaintiff, as a beneficiary of the estate, has locus to bring the suit to protect it from waste, albeit that he is not a holder of letters of administration of the estate. He does not have to be a sole beneficiary to do this, since he is not seeking administrative powers. He alleges that the Defendant has fraudulently transferred property of the estate to herself; and has, in his reply to the Defendant's written statement of defence, challenged the Defendant's reliance on a memorandum of an alleged gift inter vivos, of a *kibanja* situated in Luwero, which the Defendant used to transfer a registered land situated in Mpigi to her name. The cause of action is quite manifest from this.

It is thus clear that the preliminary objection raised by the Defendant, challenging the institution of the head–suit on the two grounds herein, has no merit; hence, I dismiss the application, with costs to the Plaintiffs.

Alfonse Chigamoy Owiny – Dollo
JUDGE

16 – 06 – 2015