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

**MISC APPLICATION NO. 2084 OF 2016**

**[ARISING FROM CIVIL SUIT NO. 829 OF 2015)**

**1. AINOMUGISHO WINIFRED**
**2. ISA BUKENYA**
**3. ABDUL SEGUJJA AND WERAGA**
**4. DR. BEN MASIIRA**
**5. NAKIJJOBA JESSICA**
**APPLICANTS**
**6. EDWARD NGOBYE**
**7. MWIJUKYE RONALD**
**8. KATUNGYE VINCENT**
**9. ATUHUSE STELLA**

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**VERSUS**

**1. FATUMA DUSTO NALUMANSI**
**2. MRS. NSUBUGA HARRIET**
**3. NKUMBI GODFREY SALONGO**
**4. NANKYA REGINA**

**::::::::::::::::::::::::::::::::::::RESPONDENTS**

**Before: HON. MR. JUSTICE HENRY I. KAWESA**

**RULING**

This is an application by Chamber Summons for orders that:-

a) *The Respondent's/Plaintiff's plaint/suit be struck out for lack of cause of action.*

b) *In the alternative but without prejudice that the Respondents/Plaintiffs provide security for costs in HCCS NO. 829 of 2015.*

The grounds of this application are that;

1) The Respondents filed Civil Suit No. 829 of 2015, Misc Application No. 1032 of 2015 and Misc Application No. 1031 of 2015 against the Applicants/Defendants.

2) That the Respondent's/Plaintiff's plaint does not disclose a cause of action and the said claim is *frivolous* and *vexatious.*

3) That the Respondents have good defenses likely to succeed.

4) That the Respondent's main suit does not have any chance of success.

*5)* That unless security for costs is furnished, the Applicants will be put to undue expenses for defending *frivolous* and *vexatious* claims.

*6)* That it's just and equitable that the Respondents' claim be struck out or in the alternative they be ordered to deposit security for costs.

The application is supported by the affidavits of Katungye Vincent, Mwijukye Ronald, Edward Ngobye, Dr. Ben Masiira, Isa Bukenya, Abdul Segujja Weraga and Ainomugisho Winifred; all Applicants in the application.

In reply and opposition to this claim, the Respondents/Plaintiffs opposed this application vide affidavits of Mr. Nkumbi Godfrey Salongo, Nankya Regina, Fatuma Dusto Nalumansi and Mrs. Nsubuga Harriet Mary.

All the Respondents aver that they have a cause of action and that no security for costs ought to accrue to the Applicants.

During the hearing, it was argued for the Applicants by Counsel Gerald Nuwagira (on behalf of the 2nd, 4th, 5th, 6th, 7th, 8th and 9th Applicants, Kenneth Tumwebaze for the 1st Applicant and Mubiru Bakidde for the 3rd Applicant that the plaint discloses no cause of action against the Applicants and the claim is *frivolous* and *vexatious*. They prayed that Court strikes out the plaint or alternatively orders the Respondents to pay security for costs.

Referring to the sworn affidavits by the Applicants, it was argued by Gerald Nuwagira that, arising from paragraph 9 (a) – (d) of the plaint, the supposed cause of action relates to Bibanja interests claimed by the Respondents traceable to the year 1999; as against Nambi Gertrude on Block 397 Plot 950; approximately 10 acres.

He argues that a kibanja interest of 1999 cannot be enforced in 2015 when the suit was filed.

He further argued that in between 1999 – 2015, the Applicants acquired their interest in different years for example Applicant No. 7; one Mwijukye Ronald got plots 889 and 890 from Block 397 in 2007.

Since then the Plaintiffs were silent on their interests yet the Applicants acquired land from Oyesigye Frank who was a registered proprietor in 2014. He said that Nuwagira; the first registered proprietor was or is not sued, yet Oyesigye transferred title to the 7th Applicant.

Counsel argued that there are no facts pleaded in respect of that title so the Plaintiffs cannot prove any fraud against the 7th Applicant.

Counsel argued that there was a similar trend for all other Applicants. He was joined in issue by counsel Mubiru in respect of the 3rd Applicant and Kenneth Tumwebaze for the 1st Applicant. Counsel referred to the law as espoused in ***O.7 r11 of the Civil Procedure Rules, O.6 r.18 of the Civil Procedure Rules, O.6 r 29 and O.6 r.30 of the Civil Procedure Rules*** respectively.

He also referred to the cases of:-

***Auto Garage versus Motokov (No.3) 1971 EA 51, Civil Application No. 13/2011), GM Combined versus A K Detergents Ltd.CA NO. (34/1995), Kakooza versus Kasaala***

and argued that for a plaint to be declared as having a cause of action, the plaint must show that;

*i) the Plaintiff enjoyed a right,*
*ii) the right is violated and*
*iii) the Defendant is the one who violated it.*

From the facts on the plaint, Counsel argued that defendants did not violate any of the Plaintiff's rights. They argued that the Plaintiff cannot prove trespass or fraud against them since the details of fraud regarding dates are lacking. Counsel pointed out that all Applicants are bonafide purchasers, have title and are in possession since 2007. They (Defendants/Applicants) are therefore legally on the land and the Plaintiff has no cause of action against them. Counsel moved Court to find the plaint *'Ominibous',* and bad in law. They moved Court to find it *frivolous* and *vexatious* and a fitting case to strike out or alternatively for ordering for the provision of security for costs.

In reply, Counsel Janet Nakakande referring to the affidavits sworn in reply and the law argued that the cause of action is stated in paragraph 9 (a) – (d) of the plaint. She argued that though the year 1999 was mentioned, it does not affect the cause of action in limitation as had been argued. She argued that the transactions were done in 2007 when all the Defendants obtained their respective titles from those who sold to them. She relied on O.1 of the Civil Procedure Rules for authority that failing to sue those who sold to the Applicants is not fatal. She argued that though the Applicants have registered these interests, these are not superior to the interests of the first Defendant Serunjogi Musa from whom their root of title originates and to whom the plaint clearly points out the particulars of fraud. She advised the Applicants to, instead file for

further and better particulars under O.6 r4 of the Civil Procedure Rules.

Counsel also wondered that if the plaint is *vexatious*, how did the Applicants file their WSDs?

She therefore concluded that the plaint is not *vexatious*, but it discloses a valid cause of action against all the Defendants. She also opposed the application for security for costs, since to her, it had no merit given the facts of the case.

The Applicant's Counsel in rejoinder maintained all their prayers as earlier on presented to Court; only adding that there were no bibanja interests as at the time of acquisition by the Applicants in the year 2007. They also pointed at section 59 of the ***Registration of Title Act*** and moved Court to find that their interests are protected. They argued that filing a WSD does not mean a plaint has a cause of action, but is only a legal requirement.

Having considered the pleadings above and all arguments as presented, this Court now determines the matter as herebelow:

1. ***Whether the plaint discloses a cause of action against the <u>Applicants</u>***

   The beginning point is an examination of O.7 (1) (e) of the Civil Procedure Rules which provides that;

   *'the plaint shall contain the following particulars:*

   *' the facts constituting the cause of action and when it arose…'*

   From the statement of the law above, it is important to critically examine the meaning of the phrase

*'facts constituting the cause of action and when it arose'*

This phrase refers to two limbs;

i) facts constituting the cause
ii) when it arose.

The first limb addresses the detailed action points complained of while the second limb refers to *'time frames'*. To further place the above in context, the Oxford English Dictionary defines the word '*fact'* in the following ways:

- *'a fact is a piece of information about circumstances that exist or events that have occurred'*
- *'a concept whose truth can be proved'*
- *'a statement or assertion of verified information about something that is the case or has happened'*
- *'an event or assertion of verified information about something that is the case or has happened'*
- *'an event known to have happened or something known to have existed.*

From the above English definition, it is evidently clear that facts allude to <u>detailed</u> information about an occurrence. That is why in Law, according to the Online Law Dictionary,

> '*in every case which has to be tried, there are facts to be established and the law which bears on those facts. Facts are also to be considered as material or immaterial. <u>Material facts are those which are essential</u> to the right of action or defence; and therefore of the substance of the one or the other, these must always be proved or immaterial, which are those not essential to the cause of action and these need not be proved'*.

I have gone at length to examine the underlying intention of the provision under O.7 r (1) (e) of the Civil Procedure Rules, regarding *'facts constituting the cause of action'*.

This is important because the law is that in order to determine if a plaint discloses a cause of action, **Court looks at the plaint only and nowhere else**.

This is under O.7 r4 (a) Civil Procedure Rules. This position was further explained in ***Kapeka Coffee Works Ltd. versus NPART Civil appeal No. 03 of 2000*** *(unreported)*.

If Court has to look at only the plaint, then the way the Plaintiff presents the facts becomes very important in determining whether there is a cause of action or not. From the above definitions, we have seen that the word '*fact*' connotes *inter-alia* a statement or assertion of verified information about something that is the case or has happened. In other words the Plaintiff must state information regarding circumstances that exist or events that have occurred. This alludes to detail. The statement of facts ought to contain those alleged mischief committed by the culprit which gave rise to the needed redress.

To explain the need for detail, Court held in ***Macharia versus Wanyoinke (1972) EA 264 K***, that;

> '*a pleading does not contain the material facts required if it only refers to them'*

This means that the plaint must detail all material facts. Also in ***Kasule versus Makerere University (1975) HCB 376,*** it was held that;

> *'facts not pleaded in the plaint cannot be raised at the trial'.*

Further more in ***Katarhwire versus Lwanga (1988 – 90) HCB 86,*** it was held that*;*

> '*a plaint which does not supply particulars is defective*'.

Applying all the above to the facts before me, the Plaintiff sued a total of 19 Defendants jointly. The facts allege that the Defendants bear different responsibilities against the Plaintiff's right as per paragraph 9 (a) – (d) of the plaint, where the plaint refers to the Plaintiffs as bibanja holders whose interests were fraudulently transferred to the Defendants.

Looking at the plaint as it is, the plaint alleges trespass and fraud. However, in a bid to clarify this, the Plaintiff's Counsel in his submission argued that the Applicants though bonafide purchasers for value, obtained title through the 1st Defendant and hence their title is tainted with fraud.

The problem with the Plaintiff's Counsel arguments is that the plaint is omnibus. It does not offer a detailed Defendant by Defendant allotment and description of liability. It is therefore not possible to look at paragraph 9 of the plaint and you immediately perceive the Applicant's liability to the Plaintiff, they having been described by the Plaintiff as registered owners who purchased their interest from Nambi. It is important to note that Nambi was not sued. It is also important to note that there is no explanation in the facts why the Plaintiffs are suing the Defendants/Applicants and not those whose names appear on the title as proprietors who sold to the Applicants. The plaint does not in a detailed manner explain the events as they are known to have happened from 1990 to 2007 when the Applicant's titles were made, and from 2007 – 2015 when the plaint is drawn and the matter brought to Court. The detailed material facts giving rise to the cause of action against the Applicants are lacking in the plaint in this case.

In the case of ***Katarehwere versus Lwanga*** *(*supra*), a plait which does not supply particulars is defective. Similarly, in* ***Candy versus Casper Air Ltd (1956) 23 EACA 13 (CA-K)****, it was held;*

> *'that as a general rule, relief not founded on the pleadings will not be given.* It was argued by Counsel for the Respondents that under O.1 r11 of the Civil Procedure Rules, the Plaintiff can sue any party from whom he deems he can get relief. She further argued that since the Applicants made a Written Statement of Defence, then they were aware of the cause of action'

I do agree with the Applicant's response that each Defendant deserves to know the cause of action against him/her. Since the Plaintiff's action against the Applicants is premised on the Plaintiff's alleged bibanja interest, then the Plaintiff's pleadings should have specified the chain of accusation as it arose from Nambi, to the different registered proprietors who later sold to the Applicants. This was omitted and hence the Applicants who hold titles are left hanging and referred to in passing as '*being liable for buying land where the Plaintiff had equitable interests'*

In a case involving registered land, that is too vague a statement to constitute a cause of action in terms described in ***Auto Garage versus Motokov (No.3)1971 EA pg.51*** that to prove that a cause of action has been disclosed, the Plaintiff must show that;

1. *He enjoyed a right*
2. *The right was violated*
3. *The Defendant violated that right.*

From the facts, the plaint as it stands does not show how the Applicants violated the alleged bibanja rights of the Plaintiff. The facts do not show that the alleged bibanja rights did exist. Therefore the element of a cause of action is lacking.

In the **Kenyan case of *New Era Stores versus Ocean Trading Co. (1945) 24 –*** *where a Plaintiff's cause of action or his title to sue depends on a statute, he must plead all facts necessary to bring him within that statute.*

Similarly in this case, I hold the view that the Plaintiff whose title to sue depends on proprietary bibanja interest, he/she should/must plead all facts necessary to bring out the facts upon which her claim arises.

Given all the above arguments, I find that the Plaintiff's/Respondent's plaint does not disclose a cause of action against all Applicants, who are bonafide purchasers for value without notice. They have successfully shown that the plaint does not show what right they violated as alleged by the Plaintiffs in the plaint. This ground of the Preliminary Objection accordingly succeeds.

2. ***Whether the Plaintiffs should pay security for costs,***

I have carefully analyzed the pleadings and arguments. I do agree with the Law as espoused in O.26 r.1 of the Civil Procedure Rules; and expounded in *Nambiro versus Kaala (1975) HCB .215*

The test is that it should be proved that;

1) *the suit is frivolous*
2) *the Applicant is likely to succeed*
3) *the Applicant has a good defence to the suit.*

Arising from the finding that there is no cause of action there, is proof that this would be a proper case for grant of security for costs because,

a) *the suit against the Applicants is frivolous*
b) *the Applicant have a defence to the suit*
c) *Applicants are likely to succeed.*

Therefore, I do not need to divulge further into this discourse as it would be academic. I do not agree that the Plaintiffs are poor as no evidence was adduced to prove so.

I do however, find that since the suit against the Applicants has been found incompetent on account of lack of a cause of action, it's not useful to keep it on the register book as it is not sustainable. A suit which discloses no cause of action is to be rejected as per O.7 r (11) (a) of the Civil Procedure Rules.

In conclusion therefore, this Preliminary Objection is sustained. The application is granted with orders that the plaint discloses no cause of action against the Applicants. It is struck out as against them only.

Costs granted to the Applicants

The application is granted with costs as above.

I so order.

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Henry I. Kawesa

**J U D G E**

24/10/2017