

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT MBALE**  
**HCT-04-CV-CA-0029-2003**

**JOEL PETER EKWIRE.....PLAINTIFF**

**VERSUS**

**THE MANAGING DIRECTOR**

**CENTURY BOTTLING**

**CO.LTD.....RESPONDENT**

**BEFORE: THE HON. MR. JUSTICE RUGADYA ATWOKI**

**RULING**

On 10<sup>th</sup> March 2004, I upheld a preliminary objection in this suit, struck out the plaint and dismissed the suit with costs to the defendant. I promised to give reasons thereof in a detailed ruling, which I now do.

The plaintiff sued the defendant for special and general damages interest and costs arising from injuries, damages and loss sustained when a cooler supplied to him by Century Bottling Company Limited under an end use contract exploded causing a massive fire in his shop premises. The fire caused extensive physical and material injuries damages and loss to himself and his wife. He sued for the loss, damages and injuries resulting from that fire. He annexed to the point a copy of the end user agreement between himself and Century Bottling Co. Ltd.

At the commencement of hearing the suit, the defendant raised a preliminary objection on a point of law. This was in effect the basis of the defence pleadings. It was submitted that the plaint did not disclose a cause of action against the defendant, and under O.7 r 11(a) of the Civil Procedure Rules it ought to be struck out with costs.

The defence argued that the plaint was based on a contract or an end user agreement between the plaintiff and Century Bottling Co. Ltd., evidenced by a copy of the end user agreement annexed to the plaint. The agreement was not with the Managing Director Bottling Co. Ltd.

Paragraph 2 of the plaint opens as follows, ‘The defendant is a male adult presumably of sound mind and the Managing Director of Century Bottling Co. Ltd...’ Mr. Sekatawa learned counsel for the defendant submitted that the above quoted part of the plaint was in compliance with O. 7 r 1 (c) of the Civil Procedure Rules, which provides in mandatory terms that the contents of a plaint must include the name, description and place of residence of the defendant, so far as can be ascertained.

The defendant therefore in this case, according to the plaint as could be seen from the above, and the title of the suit, was an adult male, and who was also a Managing Director of Century Bottling Co. Ltd. the name of this person was not given. The person who signed the end user agreement with the plaintiff was one Okiror Lawrence. He was in that agreement described as signing ‘For: Century Co. Ltd.’ He was not described there, nor in the plaint was he named as “The” Managing Director.

The suit was based on the end user agreement, which was annexed to the plaint. The parties to the agreement were Century Bottling Co. Ltd., and the plaintiff. The defendant herein was not a party to the agreement and so he was wrongly sued. The plaint therefore ought to be rejected for not disclosing of action against the defendant.

The plaintiff submitted that the plaint truly disclosed a cause of action. Once it was not disputed that the plaintiff entered into an end user agreement with Century Bottling Co. Ltd, and the person sued was the Managing Director of that company, a proper cause of action was disclosed. After all, the Managing Director was the Chief Executive of the Company, and so, must have authorized Okiror Lawrence to sign on behalf of the company.

It was not in dispute that Century Bottling Co. Ltd is a body corporate, capable of suing and being sued in its corporate name. Section 15(2) of the Companies Act, Cap. 110, provides that from the date of incorporation, the subscribers to the memorandum, capable of exercising all the powers of an incorporated company. Such a company is separate and distinct from the individual members of the company. See Salomon V. A Salomon & Co. Ltd. [1897] A.C. 22. A company

registered under the Act can only sue and be sued in its corporate name. See *Halsbury's Laws of England* Vol. 7(2) 4<sup>th</sup> Edition para. 1169.

In the present case, the plaintiff sued upon a contract entered into between himself, and Century Bottling Co. Ltd. the signature of the plaintiff, and one Okiror Lawrence signing "For Century Co. Ltd" was evidence of the contract. The copy of the agreement was annexed to the plaint.

The suit was brought against "The Managing Director, Century Bottling Co. Ltd." in paragraph 2 thereof, the plaint stated that, "The defendant is a male adult presumably of sound mind and the Managing Director of Century Bottling Company Limited which is a body corporate of suing and being sued.."

The written statement of defence in para. 4 states that the, "The defendant shall aver that by reason of the parties to the said agreement, the plaint as filed discloses no cause of action against him and will therefore raise a preliminary objection at the trial on the ground. "that defence was filed in court on 21<sup>st</sup> March 2003.

The matter came up for hearing on 17<sup>th</sup> February 2004. Up to that time, the plaintiff was well aware of the defence. One would have thought that he would have sought an amendment of the plaint. He did not do so. Even at the hearing, there was no prayer however remotely in submissions of Mr. Ogang, learned Counsel for the plaintiff than in the event court found for the defendant, the plaintiff be allowed to amend his pleadings.

The evidence of the plaintiff from his pleadings was that there was a contract between him and Century Bottling Company Limited. He annexed to the plaint a copy of the contract agreement. Interestingly, the defendant did not deny this. The plaintiff well aware of the party to that contract sued 'The Managing Director Century Bottling Company Limited'. This defendant being, according to para 2 of the plaint, 'a male adult presumably of sound mind'. The defendant was not a limited liability company, but an individual who happened to be the Managing Director of Century Bottling Company Limited. Only an individual could be presumed to be of sound mind, not a company, which is merely a legal entity. Clearly the contract he entered into was not with the Managing Director, but with the company itself.

It was not even shown that a person describing himself or herself as the Managing Director represented the company in the contract. I was surprised that when this defect in the pleadings was pointed out from the defence pleadings, Counsel for the plaintiff did not take any steps to remedy the situation.

The rather simplistic answer the defendant gave was that the person who signed the end use agreement must have done so upon the instructions, and on behalf of the Managing Director. But that was not anywhere born out from the agreement, which was an annexure to the plaint. The signatory signed 'For Century Bottling Company Limited'.

Under O.11 r. 13 of the Civil Procedure Rules any application to add or strike out or substitute a plaintiff or defendant may be made to court at any time before trial by motion or at the trial in a summary manner. I did not get any such application to amend whether by motion or at the hearing.

In the circumstances, much as I took pity on the plaintiff for the immense loss he obviously incurred, I was left with no option but to rule that the plaint having been instituted against the wrong party, it disclosed no cause of action against the defendant.

Consequently, the plaint was struck out for not disclosing a cause of action against the defendant, and the suit was dismissed with costs to the defendant.

**RUGADYA ATWOKI**

**JUDGE**

**23/08/2004.**