

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

**HCT-00-CC-CS-1007-2004**

**THE MICRO FINANCE SUPPORT CENTRE LTD                    :.....**  
**PLAINTIFF**

**VERSUS**

**1. THE UGANDA MICRO ENTERPRENUERS**  
**ASSOCIATION LTD**  
**2. JENINAH MARY NTABGOBA**  
**3. KAYONGO NKAJJA GODFREY   :.....**  
**DEFENDANTS**

**BEFORE:   THE HONOURABLE MR. JUSTICE YOROKAMU**  
**BAMWINE**

**R U L I N G:**

The MICRO FINANCE SUPPORT CENTRE LIMITED, herein after called the plaintiff sued the three defendants jointly and severally for special and general damages particularised in the plaint. The suit is based on three loan agreements.

When the suit came up for hearing, Mr. Wambuga for the defendants raised a preliminary point of law. He submitted that the plaint does not disclose a cause of action against the defendants. The reason for arguing thus is that

according to the plaint, the plaintiff relies on three agreements which were entered into between the Government of Uganda and the 1<sup>st</sup> defendant. The other defendants are said to have guaranteed re-payments. Counsel's view is that the plaintiff is not the Government of Uganda and there is no evidence in the plaint of any assignment of the government's rights in the agreements to the plaintiff. The long and short of Mr. Wambuga's argument is that the plaintiff is a third party, who cannot benefit from those agreements.

Mr. Karugire for the plaintiff does not agree. According to him, to determine whether a cause of action is disclosed or not, the Court should look at the plaint. It should not look at the attachments to it. In his view, to determine whether or not the plaintiff was party to the agreements, it requires evidence which evidence is yet to be led. The plaint is not a document that contains evidence. It is a statement of claim. They have pleaded in para 6 (a) of the plaint that the money was lent out by the plaintiff's predecessor, the Rural Micro-Finance Support Project. That should be enough for purposes of establishing a cause of action.

Counsel:

Mr. Edwin Karugire for the plaintiff.

Mr. Henry Wambuga for the defendant.

I have addressed my mind to the able arguments of both counsel.

Halsbury's Laws of England, Vol. 1 at P.6 defines a "cause of action" as "*that particular act on the part of the defendant which gives the plaintiff his cause of complaint.*" It is, so to say, the fact or combination of facts which gives a person the right to judicial redress or relief against another. The rationale is that where there is a right recognized by law, there also exists a corresponding remedy for its violation. Thus 0.6 r 1 (a) of the Civil Procedure Rules requires all pleadings generally to contain a brief statement of the material facts on which the party pleading relies for claim or defence. And under 0.7 r 1 (e), it is mandatory that a plaint contains the facts constituting the cause of action and when it arose. The consequences of a plaint which discloses no cause of action are grave: it must be rejected by the Court. It is as serious as that. Therefore, before rejecting a plaint for non-disclosure of a cause of action, the Court must be duly satisfied that the case as presented to it is unmaintainable and unarguable. Let me now turn to the impugned plaint.

In para 6 (a) thereof, the plaintiff states that its cause of action is derived from an agreement dated 30/11/2001 entered between the Rural Microfinance Support Project, the predecessor of the plaintiff, and the first defendant for the advancement to the first defendant of a loan of Shs.35,000,000-. The other claims are also based on similar agreements.

Mr. Karugire was of the view that in determining whether or not the plaint discloses a cause of action, Court should not concern itself with the agreements themselves. His argument does not in my judgment represent the law. For in **Jeraj Shariff & Co. -Vs- Chotai Fancy Stores [1960] EA 374**, the Court of Appeal for Eastern Africa stated at p. 375, and I agree:

*“The question whether a plaint discloses a cause of action must be determined upon perusal of the plaint alone, together with anything attached so as to form part of it, and upon the assumption that any express or implied allegations of fact in it are true.”.*

The relevant portions of the agreement of 30/11/2001 read as follows:

*“This agreement is made this 30<sup>th</sup> day of the Month of November in the year 2001.*

*BETWEEN the Government of Uganda (GOU) represented by the Executive Director, Rural Micro Finance Support Project (RMSP) of P.O. Box 33711, Kampala, on the one part Uganda Micro - Entrepreneurs Association P.O. Box 49336 Kampala District on the other part.*

**WHEREAS**

1. *The Government has received funds from the African Development Bank (ADB) in order to support the RMSP being implemented under the Office of the Prime Minister (OPM).*
2. *The Government represented by Rural Micro Finance Support Project (RMSP) wishes to use these funds to promote the development of sustainable financial services to the micro and small scale entrepreneurs.*
3. *Uganda Micro-Entrepreneurs Association is applying for a loan to increase its lending capacity to the micro and small entrepreneurs.*
4. *The Rural Micro Finance Support Project (RMSP) and Uganda Micro - Entrepreneurs Association have agreed to enter into this agreement for the purpose of channeling part of the funds to the Micro-Enterprises upon the terms and conditions thereafter set forth.*

*NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:*

*Art 1: THE LOAN*

*1:1 The Rural Microfinance Support Project (RSMP) hereby agrees to lend .....”*

From the above, it appears to be very clear to me that this was a case of a disclosed principal. The agreement was between the 1<sup>st</sup> defendant and the Government of Uganda represented by the Executive Director of the Project. The Rural Microfinance Support Project was a Project in the Office of the Prime Minister with an Executive Director. It had no corporate status. It was not a person in law, a '*person*' being any entity with legal rights and existence including the ability to sue and be sued, to sign contracts, appear in Court either by themselves or by lawyers, and generally, other powers incidental to the full expression of the entity in law. It simply had no independent existence, a corporate personality so to say. It was a Project in the Office of the Prime Minister and that was it.

If I got Mr. Karugire's argument properly, the plaintiff's case is based on an alleged succession, that is, that the Rural Microfinance Support Project was the predecessor of the plaintiff. It is not indicated in the plaint as to how that succession came about. This is where Mr. Karugire feels that if he is given time, he will provide the missing link through evidence. And it is of course where the problem lies. The plaintiff is a limited liability company, or so it has been described in the plaint. It could not have been born by the Project, a non-legal person. It could only have come into existence through incorporation. If on incorporation it assumed the rights of the Project or the incorporation was for purposes of the limited liability company assuming the Project rights, the law is settled that a contract made before a company is

formed cannot bind the company formed afterwards. Nor can a company by adoption or ratification obtain the benefit of a contract purporting to have been made on its behalf before it came into existence. In order to do so a new contract must be made with it after its incorporation on the terms of the old one. See **NEC & 2 Others -Vs- Nile Bank Ltd SCCA No. 17/97** reproduced in **[1995] 1 KARL 138** at p.144.

The agreements attached to the plaint are not such new contracts envisioned in the above case. As to any likely assignment of contract, the law is that rights or benefits under a contract may be assigned by legal assignment, equitable assignment or by operation of law. Except, perhaps for equitable assignment, none of the others is applicable herein in the sense that none has been pleaded. In case of any written assignment or document giving rise or explaining the genesis of such succession, the law requires under 0.7 r. 14 of the Civil Procedure Rules that it be attached to the plaint on filing. None has been attached.

I have considered '*equitable assignment*' in view of Mr. Karugire's passionate prayer that if Court so wants, he can produce evidence of the succession. The issue is of course not what the Court wants but what a party must do to establish a cause of action. I have already expressed doubt on the possibility of a non-legal person giving birth and later on being succeeded. As regards equitable assignment, a transfer of property taking effect only in equity, I'm

mindful of the fact that no particular form is necessary; it need not even be in writing. But an equitable assignee of a legal chose in action can enforce the right assigned by action, joining the assignor as a co-claimant, if he consents; or as a co-defendant if he does not. See: Osborn's Concise Law Dictionary, 9<sup>th</sup> Edn, at p. 152.

The pleadings herein do not reflect compliance with any such procedure. It is a fundamental principle of our law that only a person who is party, to a contract can sue upon it. A stranger to a contract can not take advantage of the provisions of the contract even where it is clear from the contract that some provision in it was intended to benefit him: **Midland Silicones Ltd - Vs- Scruttons Ltd [1962] AC 446.** In my view the principle stated in the above suit seals the plaintiff's fate herein. To maintain a suit in its current form would amount to the plaintiff getting a benefit out of a transaction to which it was not a party. The law says No. In my view a contrary position lacks any jurisprudential foundation that I can think of. Even if I were to take a generous course and allow Mr. Karugire's argument that evidence would take care of the objection raised by counsel, no amount of evidence can in my view change the status quo. The position would of course have been different if the case had been filed by the Government or on its behalf and the Attorney General had given authority, to the plaintiff through their counsel to conduct its prosecution. Such a course is not borne out by the pleadings.



It is settled law that where a plaintiff fails to disclose a cause of action, then it is not a plaintiff at all. It is considered a nullity which cannot even be amended. It was so held in **Auto Garage & Anor -Vs- Motokov (No. 3) [1971] EA 514** and I respectfully agree with that position. The element of a right enjoyed by the plaintiff is lacking in this case in its current form. And if any of the elements of a cause of action, such as a right enjoyed by the plaintiff which has been violated, is lacking, the plaintiff is a nullity, and no amount of talking can save it, even if a decision were to be postponed on it to a later date.

I would uphold the point of law raised by counsel about the plaintiff disclosing no cause of action against the defendants or any of them and order it (the plaintiff) struck out with costs to the defendants. I order so.

Yorokamu Bamwine

**J U D G E**

08/06/2006

8/6/2006

Mr. Karugire for plaintiff.

Mr. Paul Kutesa for defendants.

**Court:** Ruling delivered.

Yorokamu Bamwine

**J U D G E**

8/6/2006

**Mr. Karugire:** I'm instructed to apply for leave to appeal.

**Court:** Leave is granted.

Yorokamu Bamwine

**J U D G E**

8/6/2006