

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL DIVISION)
CIVIL SUIT NO. 482 of 2013

SSEKAMWA FRED T/A EX-SERVICE MEN :::::::::::::::::::::::::::::: PLAINTIFF

VERSUS

UMEME LIMITED ::::::::::::::::::::::::::::::;::::::::::::::::::::::::::::
DEFENDANT

BEFORE: HON JUSTICE B. KAINAMURA

RULING

This ruling arises from a preliminary objection raised by the defendant on the ground that the plaintiff's plaint does not disclose a cause of action and the same should be rejected and struck out.

Defendant's Submission

Counsel for the defendant relying Order 7 rule 1(e) CPR and the case of ***Sullivan Vs Mohammed Osman [1959] EA 239*** stated that the plaint should contain facts which constitute the cause of action and the consequences of non-compliance are grave. He cited the decision of Spry VP in ***Auto garage & others Vs Motokov (No.3) (1971) EA at 519***, in which the test for determining whether or not a plaint discloses a cause of action was summarised as;

- 1) The plaintiff enjoyed a right
- 2) The right has been violated
- 3) The defendant is liable

Regarding the 1st test, the defendant alleged that the plaintiff did not enjoy any right as there was no contract between the plaintiff and defendant. He contended that it was Ex-service Association Limited which enjoyed the right to power supply. He added that all the correspondences were between the defendant and Ex-service Men Association and the plaintiff does not appear anywhere. Counsel emphasised that Uganda Ex-service Men Association is a Limited liability company that can sue in its name. In conclusion, counsel submitted that the plaintiff is a stranger to the contract and had no **locus standi** to sue on behalf of Ex-service Men Association Ltd. He cited the cases of ***Lunco Contractors Ltd v The Attorney General and Combine Services Ltd H.C.C.S No. 318 of 2004*** and ***Triad Holdings Limited V Networks Exports PVT Ltd and 2 others H.C.C.S 358 of 2000*** where court found that some of the defendants were strangers to the contracts between the plaintiff and the defendants. Court held that the plaintiffs had no cause of action against some of the defendants and struck out the plaint against those defendants. Accordingly Counsel argued that Mr. Fred Ssekamwa had no account and no contract with the defendant hence he enjoyed no right.

In regard to the other tests Counsel argued that since there was no right enjoyed by the plaintiff then there was no violation of a

right that never existed, and accordingly the defendant cannot be in breach of what was not existent. Based on the above, Counsel invited court to reject the plaint under **Order 7 r 11 (a)** CPR and strike it out with costs.

Plaintiff's submissions

Counsel for the plaintiff submitted that the preliminary point of law is misconceived based on grounds that;

- A preliminary objection must constitute a preliminary pure point of law that disposes of the suit. On this point he cited the case of ***Uunet Kenya Limited Vs Telekom Kenya Limited and Another [2004] 1 EA 348.***
- The objection must raise a pure point of law which is argued on assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion.
- The plaint discloses a cause of action in Paragraph 4(a), 4(c), 4(d) and 5. The objection lacked merit and was an abuse of court process meant to delay the course of justice. ***Mukisa Biscuit Manufacturing Limited Vs West End Distributors Limited [1969] EA 696 at 701***
- The allegation that there was no contract of power supply between the plaintiff and the defendant has nothing to do with any short coming with the pleadings.

- Considering paragraph 4(a), (c), (d) of the plaint, the plaintiff brings out the fact that there was a right enjoyed, it was violated and the defendant is liable.
- The objection seeks to rely on matters extraneous to the pleadings. The written statement of defence did not even disclose the point of law. It is a rule of procedure that if a party desires to raise a point of law before the trial, the party should raise it in the pleadings especially where the point of law may dispose of the suit. See the case of ***Ssagu Vs. Road Master Cycles (U) Ltd [2002]1 EA 258.***

Finally regarding the point of law, counsel for the plaintiff submitted that the defendant's pleadings are inconsistent with the submission that the defendant had no dealings whatsoever with the Plaintiff. Counsel contended that the defendant must not be allowed to resile from its clear pleadings and the objection should therefore be overruled.

Reply to the Plaintiff's Submissions

Counsel for the defendant in reply stated that the point of law was not misconceived for the plaintiff did not have the **locus standi** to institute the suit. This was because he was not privy to the contract. This meant that the plaintiff had no right to sue in his own name. He thus maintained that by virtue of **Order 7 r 11(a)** the suit should be struck out with costs.

RULING

As pointed out above by Counsel for the defendant, for the plaintiff to disclose a cause of action, it must show that the plaintiff enjoyed a right, that right was violated and that the defendant is liable for that violation (see ***Auto Garage & Others Vs Motor*** supra)

It is trite that a stranger to a contract cannot sue upon the contract unless given a statutory right to do so (see ***Kayanja Vs New India Assurance Company Ltd [1968] E A 295***). For court to determine whether a cause of action has been revealed in the pleadings, it must determine from the pleadings whether the plaintiff had a right and that right had allegedly been violated and that it is the defendant who is liable.

Looking at the case now before court, the plaintiff alleges in paragraph 4 of the plaint that he inherited an electricity bill from his predecessor in the business premises, that at the time the defendant had disconnected the power and as a condition for reconnection the plaintiff and the defendant entered into an agreement under which the defendant required the plaintiff to pay the outstanding bill of his predecessor in the premises and to in future make prompt settlement of monthly electricity charges as they become due, that the plaintiff paid the outstanding bill

but upon reconnection the defendant on diverse occasions kept disconnecting power to the plaintiffs premises. In its written statement of defence, the defendant denied the allegations and countered that it is the plaintiff who was in breach of the contract by *inter alia* bypassing the meter (direct supply), by self-reconnecting power to the premises without authorisation, by removing the meter from the premises but remaining on supply without authorisation and by failing to pay power consumed at the premises.

From the pleadings, it is clear the plaintiff at all times before the alleged breach enjoyed a right to the supply of electricity. What is in issue in this application is the basis of that right. The defendant contends that the contract of supply was with the Uganda Ex-Services Men Association Ltd and as such the plaintiff did not enjoy any right as there was no contract between the plaintiff and the defendant. On his part the plaintiff contends that the objection can only succeed if it has the effect of disposing of the suit and all the facts pleaded are correct but must fail if any fact has to be ascertained. Both Counsel ably stated the law and authorities relied on.

I have addressed my mind to the arguments and cases cited. As a general rule liability under a contract cannot be assigned save with the consent of the other party. As rightly stated by both Counsel, for the court to establish whether or not the plaintiff has a cause of action against the defendant, the court is required to

peruse the pleadings and its attachments. (see ***Jeraj Shariff & Co Vs C hotal Fancy Stores (1960) E A 375.***

I note that under paragraph 4 (c) of the plaint, it is alleged that as a condition for reconnection the defendant entered into an agreement with the plaintiff and indeed the agreement titled DEED OF ACKNOWLEDGEMENT OF DEBT AND UNDERTAKING TO PAY is attached to the plaint. The agreement dated 26th September 2007 is between Umeme Ltd-the defendant-and Mr. Sekamwa Fred-Accountant No. 1120754-EX Service Men-the plaintiff. Based on this alone, how can court come to a conclusion that the plaintiff was a stranger to the contract of supply of electricity and did not enjoy any right and that that right was not violated by the defendant? Clearly court cannot.

In the result, i hold that the preliminary objection has no merit and must fail.

It is accordingly overruled with costs.

B. Kainamura
Judge
6.08.2014