

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

CIVIL SUIT NO.599 OF 2013

**CHARLES VAN DER
PERRE :::::::::::::::::::::::::::::::::::PLAINTIFF**

VERSUS

**PINNACLE SECURITY SERVICES LTD/
SPC PROTECTORATE &
ANOTHER::::::::::::::::::::::::::::::::DEFENDANTS**

BEFORE THE HON MR JUSTICE HENRY PETER ADONYO

RULING

The Defendants in their written statement of defence, during mediation held on 31st July 2014 and before this Honourable Court raised preliminary points of law for determination. These preliminary points of law are as follows;

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Firstly that the purported first defendant is a nonexistent legal entity from whom no reliefs can be sought from court let alone obtained by the plaintiff since it is a trite principle of law that upon incorporation, a company acquires a corporate personality separate from the members who incorporated it or any other entity. The basis of this argument is that Pinnacle Security Services Ltd is not one and the same as SPC Protectorate for the basic reason that the former was incorporated on the 3rd April 2009 while the latter was incorporated on 2nd day of December 1996. Copies of the certificate of incorporation were attached to the file and marked AA and BB respectively signifying that therefore the plaintiff could not treat both these entities as one since as there is no entity known as Pinnacle Services/ SPC Protectorate from which therefore seek redress from.

In view of the defendants since the suit was instituted against a nonexistent party **“Pinnacle Security Services/ SPC Protectorate”** and since there was such defect in the plaint which cannot be cured by amendment under Order 7 Rules 11& 19 of the Civil Procedure Rules S.I 71-1, then the plaint should be rejected as it is no plaint at all. As was held in the case of **Fort**

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Hall Bakery Supply Co. v Fredrick Muigai Wangoe [1959]
EA 474 and Airstoc Booklex Ltd v Vienna Academy Ltd
High Court Civil Application No. 503 of 2003.

Secondly, the defendants submit that the value of the subject matter is not disclosed thus leaving the pecuniary jurisdiction of the court, a matter of guess work in contravention of mandatory terms of Order 7 of the Civil Procedure Rules. Order 7 rule 1 (i), which governs on how the content of a plaint should be with among other providing that;-

“The plaint shall contain the following:

(a)

**(b) A statement of the value of the subject matter
so far as the cases admits”.**

Thus with the plaintiff not stating the value of the subject matter leaving the same to speculation and so the plaint ought to be struck out.

Thirdly, the defendants submit that it is trite law that proper filling fees ought to be paid before pleadings are deemed to properly filed in court with the instant plaint falling short of the requirements of Rule 6 of the Judicature (Court fees, Fines and Deposits) Rules S.I 13-1 which provides that no document of which the law prescribes fee for shall be used in any proceedings unless court is satisfied that proper filling fees have been paid with Rule 4 of the same rules requiring that the document ought to be endorsed by a judge or magistrate or other officer of court indicating the amount of fees which have been paid and the receipt number recording the payment embossed on its face. That this position was espoused in the decision of **UNTA Export Ltd v Custom [1970] EA 648** where it threw out documents before it on the basis that no proper filling fees had been paid such that considering that in the instant case, there is no indication whatsoever that filling fees were paid on behalf of the plaintiff at

the time of filling the plaint then the pleadings were improperly before the court and as such it should be rejected.

Fourthly, the defendants submit that the suit discloses no cause of action as is required under Order 7 Rule 1 of the Civil procedure Rules which stipulates that;

“The plaint shall contain the following particulars-

(c)

(d) The facts constituting the cause of action and when it arose:”

With Order 7 Rule 11(a) of the said Rules granting the court powers to reject a plaint which does not disclose a cause of action. In this respect , the defendants argue that taking a look at the instant plaint, what amounts to a cause of action cannot be readily discerned from the instant suit in synch with the decision of **Auto Garage v Motokov [1971] E.A 314** which laid down the prerequisites of a cause action were and these included that the plaintiff enjoyed a right, the right has been violated and the defendant is liable for the violation. That bearing the above in mind, it is the plaintiff in his claim against the first defendant for failure to pay outstanding terminal benefits amounting to US\$

3900 with the plaintiff having relied on a contract of employment which was executed between Pinnacle Security Uganda Ltd and Van Der Perre Charles Victor (plaintiff) which is a different entity from the one mentioned in the plaint that is Pinnacle Security Services/SPC Protectorate which is said submitted to be a none existent party with equally the agreement said to have been executed between the plaintiff and Kayemba Vincent of Pinnacle Security Services Ltd for payment of the outstanding terminal benefits never envisaging the 1st defendant , Pinnacle Security Services Ltd/SPC Protectorate, as a party to it.

The defendants therefore argue that it is apparent that the plaintiff's claim against the 1st defendant was misguided because Pinnacle Security Services Ltd/ SPC Protectorate is not one and the same as Pinnacle Security Services, thus pointing to the fact that the plaintiff had failed to prove that the defendant as presented on his plaint is liable for failure of payment of his terminal benefits.

In regards to the second claim which related to failure to pay for supply of weapons worth US \$ 4500 by the 1st defendant, the defendants argue that the plaint as it were was devoid of a cause

of action since it does not show that the defendants were responsible for the violation of the plaintiff's rights.

The defendants further argue that the documents relied upon by the plaintiff the sale agreement of weapons dated 22nd December 2010 and its addendum dated 15th May 2011 had the Second defendant not being privy to it as such he could not be sued for a contract of which he was not part of with the further argument that agreement for the sale of or trade in fire arms being an illegality *ab initio* in that the plaintiff contravened the provisions of S.39(2) of the Fire Arms Act Cap 299 by having in his possession excess ammunition than what he was licensed to hold or acquire, thus his acts were illegal as such the purported sale of the same by the plaintiff to the defendant was a nullity and no consideration would be paid under such an illegal contract thus no cause of action can be founded on it since it has been held that once an illegality is brought to the attention of court it overrides all manner of pleadings including admissions thereof. **See: Makula International v cardinal Nsubuga Civil Appeal No./ 4 of 1981.**

The plaintiff on the other hand states that the defendant does admit that the two companies are duly incorporated under the laws of Uganda and certificates of incorporation have been put on record for each company. Thus the issue therefore would cease to that of non existence of the legal entity rather that of, “misnomer” as the two companies were made to appear as one whereas they are distinct with the said error emanating from a sale agreement by which it is stated that the defendant purchased ammunition from the plaintiff in which the parties were described as such and on the basis of which agreement the 2nd defendant duly received the ammunition and endorsed the same as seen from Annexure “C” to the plaint. The plaintiff’s claim for terminal benefits is said to lie with his former employer, Pinnacle Security Ltd, who is the 1st defendant and the claim for the consideration of the firearms sold lies with the 2nd defendant who was trading under the name SPC Protectorate Ltd which is the Company under which the 2nd defendant held the license to deal in fire arms.

In the view of the plaintiff, if the court agrees with this position then that would only leave for determination the issue as to whether the suit can be said to be incompetent and struck out due the appearance of the two company names but that even this naming would not make the suit incompetent by virtue of the holding Justice Geoffrey Kiryabwire in the case of **Kilembe Mines Limited v Uganda Gold Mines Ltd Misc. Application No. 312 of 2012** where the learned judge referred to the definition of a misnomer in Black's Law dictionary and stated thus;

“A mistake in naming a person, place or thing especially in a legal instrument. In federal pleading - as well as in most states- misnomer of the party can be corrected by an amendment, which will relate back to the date of the original pleading...” with His Lordship going ahead to observe that, ***a review of the authorities show that most cases on misnomer involve misnaming the defendant... amendment will ordinarily be made under Order 1 Rule 10 of the Civil Procedure Rules.***

I also agree with this position in that since there is evidence on record to show the existence of the companies whose names are

placed together, courtesy of the defendants, the said misnomer can readily be corrected by amendment without changing any of the identities in the parties and that would clearly be in the interest of the justice of the case.

As regards the value of subject matter not disclosed, the plaintiff urged this court to find that the same exists that paragraphs 5(c) and 6(d) of the plaint state the values being claimed by the plaintiff from the defendants which are the value of the subject matter since the plaint shows the value of the subject matter as being **USD 24,320.86 (United States Dollars Twenty Four Thousand Three Hundred Twenty and Eighty Six Cents).**

My perusal of the plaint at paragraphs 9 (c) show that the plaintiff is claiming this said amount and hence giving a clear indication of the value of the subject matter. The objection of the defendants in this regard is not therefore sustainable on the face of this very clear claim.

On the issue the Proper Filing Fees were not paid, the Plaintiff argues that the same was duly assessed and paid in respect of this suit on the 22nd of October 2013 under receipt No. URA 725101 amounting to **Ug. Shs. 160,000/= (Uganda Shillings**

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One Hundred Sixty Thousand only) and the plaint is duly endorsed with the said stamp.

I find that this is so based on the stamp impression on the file cover and again would overrule the defendants as having not done sufficient research in this regards for a matter which is clearly on record.

On the issue whether the e suit discloses no cause of action, the plaintiff argues that the defendants allegation is premised on two grounds that entity who was party to the contract of employment was Pinnacle Security Ltd and not Pinnacle Security Ltd/SPC Protectorate as one entity and that the 2nd defendant was not party to alleged transactions since he did not sign any and so was wrongfully sued. The first ground has already been as a misnomer which can be amended the plaintiff to correct the misnomer.

The plaintiff argues that the 2nd defendant is a certified arms dealer who operated the said business under the name “SPC Protectorate Ltd”. It is under the said name that the agreement of sale of various weaponry and accessories was executed and the agreement was signed by one Richard Gordon Swan, the Quality Control Manager of the said SPC Protectorate Ltd. The 2nd

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defendant was therefore party to the contract of sale of ammunition being holder of the license by which SPC Protectorate Ltd engaged in the said business.

In my view, this is a matter of evidence and not misjoinder of parties. It is the duty of the court to find whether the said weaponry was supplied to the company on the strength of the 2nd defendant's license and with his consent. Making the 2nd defendant is liable for a right which the plaintiff states he was denied.

On the submission by the defendants that the agreement for the sale of or trade in fire arms is an illegality *ab initio* thus no cause of action can be founded on it on the basis that the fire arm certificates attached to the plaint allowed for a particular quantity of ammunition to be held at any one time whereas the sale agreement shows that the plaintiff sold more ammunition, I would tend to agree also with the plaintiff that this is a matter for adducing of evidence via a full trial and cannot form a matter to be resolved at the preliminary stage as was held by my learned sister

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Justice Percy Ntuhaise in the case of **Nakawa-Naguru residents Association v Attorney General & Another C/S No. 146 of 2011**, when she quoted the definition of a Preliminary Objection as was done in the case of **Mukisa Biscuit Manufacturing Co. v West End [1969] EA 696 at 701** where Sir Charles Newbold stated that, ***“a preliminary Objection raises a pure point of law which is argued on the assumption that all the facts pleaded by other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is extrinsic evidence of judicial discretion.”***

In her holding, the learned judge in **Nakawa-Naguru case** (supra) had this to say; ***“where a point of law can only be ascertained by extrinsic evidence, the matter becomes a triable issue to be determined on adducing the relevant evidence during the trial rather than being determined as a point of law.”***

I entirely adopt this position. In this matter all I can see is that the points of law raised are triable matters which have to be subjected to trial to ascertain their truthfulness. Indeed I am

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perturbed by this persistent method of using preliminary point of law yet clearly these are procedural and are curable. The process of justice should not be gagged by merely matters which do not go to the root of the matter.

In summary therefore, I find that the preliminary objections raised by the defendants are indeed not raised in the interest of the justice of this case as all the issues which learned counsel has raised are those which can either be corrected by an amendment or the adducing of evidence during a full trial.

I therefore overrule the preliminary objections raised in this matter and direct that the plaintiff amends the misnomer stated above and that this matter proceed to full trial.

I do so order accordingly.

Henry Peter Adonyo

Judge

18th December, 2014