

**THE REPUBLIC OF UGANDA,
IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL DIVISION)
CIVIL SUIT NO 0372 OF 2009**

NICOZ UGANDA LIMITED.

.....**PLAINTIFF**

VS

BANK OF UGANDA AND ANOTHER
DEFENDANTS

BEFORE THE HON. MR JUSTICE HENRY PETER ADONYO

RULING ON A PRELIMINARY OBJECTION

A preliminary objection was raised by the Defendants on Issue Number 1 framed in the Joint Scheduling Memorandum which is whether the Plaintiffs have a cause of action against the Defendants in light of whether the latter were privy to the contract sued upon.

Mr Masembe Kanyerezi appeared for the Defendants while Mr Bruce Musinguzi and Mr Paul Kuteesa represented the Plaintiff.

Mr Kanyerezi submitted that from the plaint, the Plaintiff's suit is for enforcement of alleged contractual rights against the

Defendants for alleged breach of a share sale agreement. That the said sale agreement was between the Plaintiff and two entities being Greenland Bank Ltd (In Liquidation) and FIBA (U) Ltd (in Receivership) and hence the Plaintiff's cause of action is against those two entities and not the Defendants who were not party to the contract.

That the First Defendant is being sued as a liquidator of Greenland Bank while the 2nd Defendant as a receiver of FIBA (U) Ltd and that both a liquidator and a receiver are not liable for the wrongs of a limited liability company it is liquidating or under receivership. He relied on **Robert Mwesigwa and 135 Others versus Bank of Uganda HCCS 588 No. 2003** and on Sections 31 and 48 of the Financial Institutions Act to propose that the proper parties to sue were those in whom the contract was entered with.

In reply, Mr Musinguzi submitted that the plaint does indeed disclose a cause of action against the Defendants and that the two Defendants signed the sale agreement annexed to the Plaint. He relied on **Attorney General versus Oluoch [1972] EA 362** and **Jerav Shariff & Co versus Chotai Fancy Stores [1960] EA 373** where it was held that the question whether a plaint discloses a cause of action must be determined upon a 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.

He stated that Annexure “A” to the plaint establishes that the Plaintiff had a right which was violated and the Defendants are responsible.

Mr Kuteesa also submitted to the effect that a liquidator who commits a breach of contract is liable and that Section 31(2) of the Financial Institution Act gives the 1st Defendant a right to sue and be sued. Both Counsels prayed the objection be over ruled.

In rejoinder, Mr Kanyerezi submitted that the prime question before the court is whether the present defendants are liable on the contracts sued upon. That the contract in Annexure A is not between Bank of Uganda and the Plaintiff but between the parties named in the contract. Further that Bank of Uganda executed the above contract on behalf of the entities, that is, Greenland Bank and the receiver on behalf of FIBA (U) Ltd and that liability remains with the entities who were parties to the contract and not the executors to the contract. He prayed the objection be upheld.

The background to this case is that the Plaintiff, an investment company, filed a suit against the Defendants on 5th October, 2009 claiming Uganda Shillings (Ug Shs. 300,000,000/=) being compensation for the land comprised in Leasehold Register Volume 1574 Folio 1 situate at Kiti village, Masaka District, herein after referred to as “The Land”.

It is the Plaintiff’s case that on 27th October, 2000, the First Defendant in its capacity as liquidator of Greenland Bank (Ltd) (In liquidation) hereby after referred to as GBL and the Second

Defendant in his capacity as receiver of FIBA (U) Ltd (In Receivership) hereafter referred to as FIBA sold all shares held by GBL and FIBA in Greenland Insurance Company constituting 99.78% to the Plaintiff as entailed in a share sale agreement annexed to the Plaint as Annexure "A".

I have carefully listened to the submissions of Counsel, considered the authorities relied on and perused the plaint, together with the attachments thereto.

The question of whether the Plaint discloses a cause of action is determined upon perusal of the Plaint alone and any attachments thereto. In the case of **Ismail Serugo versus Kampala City Council and the Attorney General Constitutional Appeal No.2 of 1998**, Wambuzi CJ as he then was held at page 3 of his judgment that in determining whether a Plaint discloses a cause of action under Order 7, Rule 11 of the Civil Procedure Rules or a reasonable cause of action under Order 6 Rule 30 of the Civil Procedure Rules, only the Plaint can be perused. He said and I quote;

"I agree that in either case, that is whether or not there is a cause of action under Order 7 Rule 11 or a reasonable cause of action under Order 6 Rule 29 only the Plaint can be looked at..."

Similarly, in the case of **Attorney General versus Oluoch [1972] EA page 392**, it was held that the question of whether a Plaint discloses a cause of action is determined upon perusal of

the Plaintiff and attachments thereto with an assumption that the facts pleaded or implied therein are true.

The position regarding “cause of action” was well stated in **Auto Garage & others versus Motokov (No 3) [1971] EA. 514** where it was stated that the Plaintiff must establish that he or she enjoyed a right, the right was violated, and that the Defendant is liable. Additionally, it appears to me and as was held in the case of **Hasmani versus National Bank of India Ltd [1937] 4 E.A.C.A.55** that it is mandatory under the provisions of **Order 7 Rule 11 Civil Procedure Rules** for a Plaintiff to be rejected if it discloses no cause of action. This position was confirmed by the East African Court of Appeal in case of **Sullivan vs. Ali Mohammed 1959 E.A 239** per **Windham J** that the Plaintiff must allege all the necessary facts that establish the cause of action.

Relating the above to the instant matter, my perusal of the share sale agreement annexed to the Plaintiff as “A” shows on its cover page that it is an agreement between Greenland Bank Ltd (In Liquidation and FIBA (U) Ltd (In Receivership) and Nicoz (U) Ltd . However in execution of the said agreement, the Second Defendant and the Governor of the First Defendant signed on behalf of GBL and FIBA.

It is also true that the First and Second Defendants executed the agreement on behalf of GBL and FIBA.

Section 31(1) of the **Financial Institutions Act Cap 54** provides that the central bank shall, upon possessing a financial

institution under section 30, be vested with exclusive powers of management and control of the affairs of the financial institution.

Further **Section 31(2) (d)** of the same Act provides that the Central Bank shall have power to execute any instrument in the name of the financial institution which I find is what the First Defendant did in the instant case with the share sale agreement that the Plaintiff seeks to rely on.

A look at **Section 48** of the aforesaid Act however protects the Central Bank from legal proceedings for anything done or is intended to be done in good faith pursuant to the provisions of the Act.

For the above reasons, I inclined agree with Mr. Kanyerezi that when the provisions of the law above is read closely, it would appear to me that the Defendants could not said to be parties to the Agreement on which the instant claim is based as they seemed to be executing statutory duties not related to the legal personae of the parties they executed the said agreement but for the parties mentioned. Hence I would seem to believe that the proper parties to be sued would be Greenland Bank (in liquidation) and FIBA (U) Ltd (in receivership) as they are distinct legal entities.

I inclined to believe that this is the correct position based on the in decisions in **Robert Mwesigwa & Another versus Bank of Uganda HCCS 588/2003** and **Ngamita Peroza & Others**

versus Bank of Uganda The Liquidator of The Co-operative Bank Ltd HCMA 695/2002.

In conclusion, I would be inclined to believe the submission of counsel Kanyerezi and I would uphold the preliminary objection.

Having made that holding, then I would make a finding that the Plaintiff as it is before me does not disclose a cause of action as against the instant Defendants which would inevitably lead to the dismissal of the instant suit with costs to the Defendants.

Orders

I do order at Kampala, this 9th day of May 2014, the dismissal of the suit with costs.

Henry Peter Adonyo

JUDGE