

THE REPUBLIC OF UGANDA

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

HIGH COURT CIVIL SUIT NO.581 OF 2012

EMMANUEL

MUSIIME:.....PLAINTIFF

VERSUS

UGANDA ELECTRICITY TRANSMISSION COMPANY

LTD:.....DEF

ENDANT

BEFORE THE HON. MR. JUSTICE HENRY PETER ADONYO:

RULING ON PRELIMINARY OBJECTION:

1.0. Brief Background:

On the 15th day of December, 2014, Mrs. Diana Ebalu, learned counsel representing the defendant raised a preliminary objection on a point of law on the basis that the plaint in the instant suit did not disclose a cause of action as against the defendants. The

basis of this assertion were later put in writing through a written

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submissions and a response to it also in writing made by learned counsel for the plaintiff.

The background to the instant matter is that the plaintiff made a claim against the defendant for general damages stated to arise out of breach of contract and/or detinue and or /unlawful detention of a certificate of title for land comprised in Sheema Block 1 plot 125 The plaintiff therefore as a result claims for such reliefs which include general damages and costs of the suit.

2.0. The Law and Arguments for and against:

Upon this matter being readied for adjudication, learned counsel for the defendant raised a preliminary point of law that the plaint as presented by the plaintiff did not disclose a cause of action as against the defendant and should be rejected by virtue of **Order 7 Rule 11 of the Civil Procedure Rules** which generally provides that a plaint shall be rejected for reasons like where it does not disclose a cause of action. The basis of this assertion was, as seen from the written submissions of learned counsel for the defendant, was that the plaintiff suit is grounded on a certificate of title for Sheema Block 1 Plot 156 which the plaintiff is an owner. Further, it is contended that under paragraph 4(a) of

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the plaint it is indicated that the plaintiff entered into an oral contract with the defendant where it was agreed that the plaintiff would surrender to the defendant the owners copy of the certificate of title for Sheema Block 1 Plot 156 for purposes of subdivision and compensation. That document or a copy of it was attached to the pleadings as Annexure "A" to the plaint. The said document is certificate of title and it shows on its face that it is registered in the names of one Abel Muhereza. That being so, learned counsel for the defendants argued that the said document should prove that the plaintiff had no locus to bring the instant suit and thus would have no cause of action against the defendant since he is not the one who is registered on the said title. That this position was best expounded in celebrated case of **Auto Garage v Motokov [1971] EA 514** where the court held that a cause of action can only be disclosed where it is established that;-

- (i) The plaintiff has a right;
- (ii) The said right has been violated; and
- (iii) The defendant is responsible/liable

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Thus that since the plaint in the instant matter did not show that the plaintiff was the owner of the suit land in compliance with Section 59 of the Registration of Titles Act which provides that the inclusion of one's names in a certificate of certificate of title to be conclusive evidence of ownership then the plaintiff did possess no right to institute the instant suit as it was only the registered proprietor of such a property who had exclusive powers to bring an action and so since this is the situation existing in the instant matter, the plaintiff should be considered a stranger in it with no *locus standi* to bring the instant suit.

Additionally, learned counsel for the defendant submitted that for plaint to disclose a cause of action that could only be determined perusing it alone together with any attachments to it as was pointed out in the case of **Ismail Serugo v Kampala City Council and the Attorney General Constitutional Appeal No. 2 of 1998** by Wambuzi, CJ (as he then was) at page 3 of his judgment when he categorically made this point clear that in determining whether a plaint discloses a cause of action under **Order 7 Rule 11** or a reasonable cause of action under **Order 6**

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Rule 30 only the plaint could be perused when he stated as follows :

“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 Rule 29 only the plaint can be looked at...”

Learned counsel for the defendant went on to submit that this same sentiments were espoused in an earlier decision of the Court of Appeal for Eastern Africa when it held in the case of **Attorney General v Oluoch [1972] EA page 392** that the question of whether a plaint discloses a cause of action is determined upon perusal of the plaint and the attachments thereto with an assumption that the facts pleaded or implied therein are true and that my learned brother Madrama, J of the Commercial Division of the High Court agreed with this position in his holding in the case of **Sun Air Ltd v Nanam Transport Co. Ltd** when he stated that where a plaint does not allege all the necessary facts to constitute a cause of action, it shall be rejected under Order 7 Rule 11(a) of the Civil Procedure Rules thus making

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it mandatory for a plaint to be rejected for not disclosing a cause of action .

From the holding of the courts above, learned counsel for the defendant, therefore urged this honourable Court to find that similarly the plaint in the instant matter should be found to disclose no cause of the action since the plaintiff is suing on the basis of the title deed for Sheema Block 1 Plot 125 which is registered in the names of another person yet he had no legal rights to use it to bring a cause of action against the defendant. On that basis, learned counsel for the defendant prayed that instant the plaint be rejected under Order 7 Rule 11 of the Rules as it offends the provisions of Order 6 Rule 30 of the Civil Procedure Rules for failure to disclose a cause of action and should therefore be struck out with costs to the defendant.

Be that as it may, learned counsel for the defendant made another proposition without prejudice to the above argument that the court should also find that since according to the plaintiff in his witness statement he alleges that he was given powers of attorney by the registered proprietor a Mr. Abel Muhereza and even goes on to attach the said power of attorney as Annexure A

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, it should be found that the said power of attorney did not grant its donee the any powers to institute a suit more so even against the defendant for it only granted the donee therein the powers to take possession of the land and use it in the manner described in the certificate of title in addition to making any claims for compensation from any government body which may want to put the land to public use or even to sell and sign any transfer forms and to put any development on the land, to use it for any purpose, to stop anybody from trespassing on the land and to generally do all other acts, deeds and things necessary for the fulfillment of the above mentioned purpose other than sue. That from the perusal of the said powers of attorney, it was clear that the plaintiff had no powers to institute a suit by virtue of the definition in **Black's Law Dictionary** which defines a power of attorney to be ;

“an instrument in writing whereby one person as principal appoints another as his agent and confers authority to perform certain acts or kinds of act on behalf of principal; ...an instrument authorizing another to act as one's agent

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or attorney; ...such power may be either general (full) or special (limited)”.

And that since this particular position was recognised by the court in the case of **Kajubi v Kayanja [1967] EA page 301** where it was of the opinion that **“the power of attorney held by the respondent did not authorize him to institute proceedings in his personal name and capacity; and his doing so made the proceedings fundamentally and incurably irregular...”**

Then for the plaintiff to institute any proceedings in court , he ought to have had in the said powers of attorney a specific clause which gave him the powers to sue and since the instant powers of attorney did not provide for such specific powers then the plaintiff had no right to start proceedings in a court of law against the defendant recognizing the fact that the instant powers of attorney which is attached to the plaint was a special one with limitations as to what its holder could do.

The above formed the general argument by the learned counsel for the defendant who thus urged this Honourable court to consider her proposition to eventually agree with her proposition

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and reject the plaint with costs On taking into account the various decisions of the courts in that respect.

In reply to the raised preliminary objection, learned counsel for the plaintiff conceded to the facts of the case as presented by the defendant but went on to point out that the preliminary point of law raised by the defendant was grossly misconceived as it was an abuse of the court process and thus should be overruled with costs since the plaint in the instant matter did disclose a cause of action and did not fall under the ambit of **Order 7 Rule 11(a) of the Civil Procedure Rules** such that it should be rejected. In making this submission, learned counsel for the plaintiff pointed out that the pleadings in the instant matter as should be read from the plaint was for breach of contract, the detention thereof of the title in question, damages and costs, thus making the plaint to disclose the relevant cause of action as against the defendant since it shows the ingredients of an existence of a contract with the defendant who had unlawfully detained the title in question squarely making the instant plaint to comply with the principles of *locus claccius* as was held in the case of **Auto Garage v Motokov [1971] EA 514**.

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Further, learned counsel for the plaintiff pointed out that from the pleadings, the plaintiff show the circumstances under which he came by the said certificate of title and that he was not making any claims for recovery of any compensation in respect of the said certificate of title or for the recovery of land under which the title was issued but that his claims was for the defendant to fulfill the terms of a contract and illegal detention of the said certificate of title being the subject of an oral contract where the defendant was to release the said title so that certain actions could be carried out as best stated in the plaint and as was agreed as matters of facts during the joint scheduling of this suit with the points raised in preliminary objection by the defendant only resolvable by each party adducing evidence in a full hearing than at this stage as was

held in the case of **Attorney General v Indorid & 25 Others Court of Appeal Civil Appeal No. 4 of 2009** where the court was of the opinion that in order to prove whether there was compliance with the terms of the order of court, those facts could only be ascertained through parties adducing evidence and hence those rights should not be brushed away by a conclusive

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preliminary objection ruling. The plaintiff herein states that the acts he has complained against can only be ascertained via a fully fledged trial and cannot be washed away by the defendant's preliminary objection. **See: Lt. Kabareebe v Major Nalweyiso CACA No. 34/03 (C.A).**

Further, the plaintiff points out that the provisions of **Section 59 of the Registration of Titles Act** was inapplicable to the instant matter since he was not seeking the recovery of land but was making his claims based on a contract which he wishes the defendant to fulfill making his plaint satisfies the *ratio decidendi* in the case of **A.G v Oluoch [1972] Ea 392** and that of **Sun Air Ltd V Nanam Transport Co. Ltd** (supra) as he was not suing on behalf of the registered proprietor of the suit property but doing so in his own right on the basis of the alleged oral contract with the defendant which is not relying on a power of attorney. On the basis of these submissions, the plaintiff urged this Honourable Court to find disregard the preliminary objection as unwarranted and to reject it with costs with orders the suit be heard and determined based on the substance of the plaintiff's claim.

3. Resolution of this Matter:

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I have carefully considered the submissions of learned counsels in regards to whether the plaint in the instant should be dismissed in by virtue of **Order 7 Rule 11 of the Civil Procedure Rules**. I have also carefully considered the position of the law as seen from the authorities cited and this is my view in regards to the issue raised.

As far as the plaint in this matter is concerned, my perusal of it show that the plaintiff is not suing the defendant in respect of the certificate of title in question but that the defendant had failed to deliver the said of certificate of title to enable certain actions including the re demarcation and or subdivision of land to enable of cutting off the portion in respect of which the defendant had agreed and subsequently compensated the plaintiff. The plaint in paragraph 3 states the basis of the plaintiff's claim and it shows.

Paragraph 3 of the Plaint:

“The plaintiff’s claim against the defendant is for general damages for breach of contract and or detinue/unlawful detention of certificate of title to the land comprised in Sheema Block 1 Plot 156, an order that the defendant

delivers up to the plaintiff the above certificate of title and costs of the suit and interest thereof.”

Paragraph 4 of the said plaint gives the general background as to why the claim in paragraph 3 is made and it clearly gives the reason as to why the plaintiff seeks the delivery of the said certificate of title so certain actions could be undertaken including the re demarcation and or sub division of the land in question and that the claim arose as a result of a verbal contract between the parties herein before court which contract the plaintiff avers was breached.

I find nothing in the plaint to show that the plaintiff was suing the defendant on the basis of the certificate title as the defendant would like this honorable court to believe. On the contrary it is clear to me that the plaint shows that the plaintiff is suing the defendant based on a contract and the certificate of title as an instrument to enable the fulfillment of the contractual obligations between the two parties.

Thus while I agree entirely with the principles of law as stated in the cited cases, I find that they are not relevant in resolution of the instant impasse since in view the preliminary objection

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appears to have been raised based on the misreading of the plaintiff other than what it actually is in that the plaintiff is not suing the defendant on the basis of the certificate of title but that he is suing the defendant for breach of contract and thus have appropriate locus standi in doing so and hence I find that the objection raised that he had no locus cannot stand rendering the provisions of **Order 7 Rule 11(a) of the Civil Procedure Rules** to be inapplicable in this case.

In the premises would agree with the submissions in reply by learned counsel for the plaintiff which clearly points out the basis of the instant suit and would be constrained to overrule the preliminary objection raised by learned counsel for the defendant with costs to be in the cause with further orders that this matter proceed to full hearing as earlier scheduled to determine the real dispute between the parties herein. I do so order.

Henry Peter Adonyo

Judge

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10th February 2015.

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