

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL DIVISION)
MISC. APPLICATION NO. 685 OF 2017
(ARISING FROM HCT-00-CC-CS-0434-2017)

WASSWA PRIMO:.....APPLICANT

VERSUS

MOULDERS(U) LIMITED :.....RESPONDENT

BEFORE: THE HON. JUSTICE DAVID WANGUTUSI

R U L I N G:

The Respondent Moulders (U) Limited sued the Applicant Wasswa Primo in Civil Suit No. 434 of 2017 seeking among others US \$ 82,000, interest, general damages and costs. His claim was based on a legal mortgage executed on the 27th day of February 2013 between Wasswa Primo and Moulders (U) Limited.

The deed was attached to the plaint marked “A” when the Applicant/Defendant was served with the Plaint he filed this Application. In the Application he sought orders that the suit be rejected for failure of disclosure of a cause of action against the Applicant and for being barred by the law. He therefore sought that the suit be struck out. The ground for those prayers was that the Respondent was non-existent. In the affidavit supporting this Application the Applicant stated that he had conducted a search at the Uganda Registrations Services Bureau and established that Plaintiff/Respondent was non-existent. In support of this averment he attached **Annexure “E”** which was in response to the search. In this response the Registrar General wrote;

*“A search conducted on our records revealed the name **Moulders Limited** incorporated on the 8th day of January 2010 under registration number 114827 and not **Moulders (U) Limited** as per your request.”*

The Respondent conceded that there is no such company called Moulders (U) Limited. He however submitted that referring to Moulders Limited as Moulders (U) Limited was a mistake that could be corrected under Order 1 rule 10 of the Civil Procedure Rules.

Order 1 rule 10 provides as follows;

“Where a suit has been instituted in the name of the wrong person as Plaintiff, or where it is doubtful whether it has been instituted in the name of the right Plaintiff, the court may at any stage of the suit, if satisfied that the suit has been instituted through a bonafide mistake, and that it is necessary for the determination of the real matter in dispute to do so, order any other person to be substituted or added as Plaintiff upon such terms as the court thinks fit.”

I have read this provision and while I appreciate that you will substitute a wrong Plaintiff with the one you intended where it is discovered that the person so named as a Plaintiff is not the one who was intended, the rule also makes it clear that the wrong person must be existing. In the instant case Moulders (U) Limited does not exist so you cannot say you are substituting. A suit filed by a non entity is no suit at all as in the words of Templeton in the **Fort Hall Bakery Supply Company vs Fredrick Muigai Wangoe (1959) EA 474,**

“A non- existent person cannot sue and once the court is made aware that the Plaintiff is non-existent, and therefore incapable of maintaining an action it cannot allow the action to proceed.”

In my view since the person is non-existent there is no suit filed and where it is filed the anomaly cannot be cured under Order 1 rule 10. This position is well stated by Remmy Kasule J in the **The Trustees of Rubaga Miracle Centre vs Mulangira Ssimbwa Misc.Application No. 576 of 2006** in these words;

“The law is settled. A suit in the names of a wrong Plaintiff or Defendant cannot be cured by amendment. The Defendant described as the board of Trustees of Rubaga Miracle Centre Cathedral does not exist in law.”

A non-existent Defendant could not be substituted because as in reality there is no valid plaintiff. Since in this case there was no company called Moulders (U) Limited you cannot talk of substitution.

Furthermore, in this case there was even no bonafide mistake. Counsel for the Respondent had initially filed Civil Suit No. 695 of 2013 using the proper existing company. He then withdrew the suit and filed another one using a non-existent person and attached to its support a mortgage deed purportedly executed by that non-existing person. Such pleadings are incurably defective and cannot be allowed to remain in the judicial process. This plaintiff is therefore struck out with costs.

Dated at Kampala this 8th day of September 2017.

Hon. Justice David Wangutusi

JUDGE