



The Plaintiffs base their suit on a Power of Attorney given to the 2<sup>nd</sup> Plaintiff by the 2<sup>nd</sup> Defendant, a Memorandum of Understanding and a resolution passed by the 1<sup>st</sup> Plaintiff as a way of effectualizing the contents of the Power of Attorney and the Memorandum of Understanding.

The plaintiff alleges that by a subsequent Resolution by the 1<sup>st</sup> Plaintiff authorized it to borrow money from the 1<sup>st</sup> Defendant all based on the Power of Attorney, the Memorandum of Understanding using the 2<sup>nd</sup> Defendant's Certificate of Title as security.

The plaintiff also alleges that the 1<sup>st</sup> Defendant considered the Resolution of the 1<sup>st</sup> Plaintiff before it advanced the loan.

The plaintiff further alleges that the 1<sup>st</sup> Plaintiff forwarded the Certificate of Title to the 1<sup>st</sup> Defendant after retrieving it from one Tenywa to whom the 2<sup>nd</sup> Defendant owed money.

A copy of the Certificate of Title shows that when the title was retrieved from Tenywa Ahamed on 12<sup>th</sup> August 2010, it was mortgaged to the 1<sup>st</sup> Defendant which was registered on 15<sup>th</sup> September 2010.

These claims draw both Defendants into a web that can only be unraveled by trial. In reaching this position am fortified by a passage by their Lordships in ***El Busaidy v. Commissioner of Lands and Others [2002] 1 KLR 508*** in these words;

*“A “preliminary objection” correctly understood, is now well defined as, and declared to be a point of law which must not be blurred with factual details liable to be contested and in any event, to be proved through the process of evidence. Any assertion, which claims to be a preliminary objection, yet it bears factual aspects calling for proof, or seeks to adduce evidence for its authentication, is not as a matter of legal principle, a true preliminary objection which the Court will allow to proceed. Where a Court needs to investigate facts, a matter cannot be raised as a preliminary point.”*

In my view the plaintiff raises a lot of facts to be contested calling for proof and adducing of evidence all of which removes the matter from the arena of preliminary objection.

The 1<sup>st</sup> and 2<sup>nd</sup> Defendants have in their objections submitted many disputed facts which stand to be tested yet anything purporting to be a preliminary objection must not deal with disputed facts.

The Plaintiffs claim give rise to questions that can only be resolved with the participation of the Defendants since they are leveled at them as the parties that deprived the Plaintiffs of a right they ought to enjoy.

In conclusion, the Court finds real questions to be responded to by the two objecting Defendants.

The preliminary objections are therefore disallowed with costs to abide the final decision.

**Dated at Kampala this 12<sup>th</sup> day of July 2018.**

**HON. JUSTICE DAVID WANGUTUSI  
JUDGE**