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THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL DIVISION)
CIVIL SUIT No. 957 OF 2019

DEIRDRE MEYA MUKWELI PLAINTIFF

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VERSUS

- 1. JOYLAND ENTERPRISES**
- 2. RUTH RWAMWENG**
- 3. RICHARD TUMUSIIME**
- 4. SWIZIN TWESIGE**

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- 5. SAFIQ ABDUL DEFENDANTS**

BEFORE: HON. LADY JUSTICE SUSAN ABINYO

RULING

20 Introduction

The Plaintiff's claim against the Defendants jointly and severally seeks to recover UGX 66,000,000(Uganda Shillings Sixty Six Million Shillings only), as the outstanding balance from the principal advanced as a loan to the Defendants, and UGX 471,200,000(Uganda Shillings Four Hundred Seventy One Million Two Hundred
25 Thousand Shillings only) being accrued interest as at 22nd October, 2019, general damages, and costs of the suit.

Background

That sometime in October, 2015, the 2nd Defendant, who is the Company Secretary, and one of the named Directors of the 1st Defendant Company,
30 approached the Plaintiff since he is well known to the Plaintiff, and requested for a loan of UGX 85,000,000 to clear customs duty charges on behalf of the 1st Defendant.

5 That the Plaintiff was previously employed as a teacher for over Thirty (30) years,
and upon her retirement in July, 2015, she was paid gratuity and pension benefits
in October, 2015. The Plaintiff used her gratuity, and benefits to advance a loan
of UGX 85,000,000 (Uganda Shillings Eighty Five Million Shillings only) to the 1st
10 Defendant Company, and the parties executed an agreement dated 20th
October, 2015.

That the Plaintiff and the Defendants specifically agreed under clause 7 and 8 of
the Agreement that the Defendants would sell all the products by 20th April, 2016,
and failing of which, as a remedy, the outstanding balance worth the products
would be reimbursed to the Plaintiff. That as at 20th April, 2016, the Defendants
15 had made some payments leaving a balance of UGX 79,000,000 (Uganda Shillings
Seventy Nine Million Shillings only).

That despite constant reminders, the Defendants have failed to clear the above
sums of money, and the Plaintiff holds them liable in special and general
damages.

20 The Defendants filed their written statement of defence, in which the 2nd
Defendant denied to have approached the Plaintiff for a loan. The 2nd and 3rd
Defendants, who are Directors to the 1st Defendant denied having dealt with the
Plaintiff, and that they are not indebted to the Plaintiff in the sums claimed or at
all. That the 1st, 2nd and 3rd Defendants shall raise preliminary objections to the
25 validity of this suit.

During the scheduling proceedings, Counsel for the 1st, 2nd, and 3rd Defendants
raised three preliminary objections that:

1. The plaint does not disclose a cause of action against the 2nd, 3rd, 4th, and
5th Defendants.
- 30 2. The Plaintiff sued a non-existent entity and a suit against a non-existent
entity is a nullity.
3. The Plaintiff failed to follow the mandatory procedure of taking out
summons for directions, and then suit therefore abates with costs.

Representation

35 The Plaintiff was represented by Counsel Bazira Anthony of M/S Byenkya, Kihika &
Co. Advocates while Counsel Karoro Francis of M/S A.L Advocates appeared for
the 1st, 2nd, and 3rd Defendants.

5 Determination of the preliminary objections

I have taken into consideration the pleadings in this suit, and the submissions of Counsel for the parties herein, to find as follows:

10 The well-established principles to be considered in determining whether there is a cause of action, has been stated in a plethora of cases. In **Tororo Cement Co. Limited Vs Frokina International Limited SC. Civil Appeal No. 2 of 2001**, which cited with approval the case of **Auto Garage Vs Motokov No.3 (1971) EA 514, at 519**; a cause of action was defined as every fact which is material to be proved to enable the Plaintiff to succeed or every fact which if denied, the Plaintiff must prove in order to obtain judgment.

15 The following questions as guided in the case of **Auto Garage Vs Motokov No.3** (supra), on whether a cause of action has been disclosed by the Plaintiff are that;

1. Whether the Plaintiff enjoyed a right?
2. Whether that right has been violated? and
3. Whether the Defendant is liable?

20 The settled position of the law is that, in determining whether a plaint discloses a cause of action, the Court must look only at the plaint, and its annexures if any, and nowhere else upon the assumption that any express or implied allegations of fact in it are true. (**See Tororo Cement Co. Ltd Vs Frokina International Ltd(supra), Narottam Bhatia & Anor Vs Boutique Shazimi Ltd S.C Civil Appeal No. 6 of 2009,**
25 and **Jeraf Sharif & Co. Vs Chotai Fancy Stores [1960] E.A 374)**

I have looked at paragraph 9(b) of the plaint, in which the Plaintiff averred that sometime in October, 2015, the 2nd Defendant, who is the Company Secretary, and one of the named Directors of the 1st Defendant Company, approached the Plaintiff since he is well known to the Plaintiff, and requested for a loan of UGX
30 85,000,000 to clear customs duty charges on behalf of the 1st Defendant.

The Agreement dated 20th October, 2015 attached as Annexure "A" to the written statement of defence by the 1st, 2nd, and 3rd Defendants, indicates that the Joyland Enterprises Ltd was the seller, and Deirdre Meya Mukweli was the buyer. The 2nd, 3rd, 4th, and 5th Defendants were parties to the Agreement, and in
35 paragraphs 2-7 of the plaint, they are alleged to be Directors of the 1st Defendant Company.

5 I am fully persuaded by the decision in ***Stanbic Bank Uganda LTD Vs Deduct Lubricants (U) LTD & 3 Others HC Misc. Application No. 845 of 2013(Arising from Civil Suit No. 438 of 2012)***, where Madrama. J (as he then was) stated that it is the basic common law principle that the mind of a company where guilty intent or responsibility is being considered cannot meaningfully be separated from the
10 minds of the Directors where the will of the company is discerned. ***(See the case of HL Bolton Co. Vs TJ Graham and Sons [1963]3 ALLER 624 at 630)***, cited with approval in ***Stanbic Bank Uganda LTD Vs Deduct Lubricants (U) LTD & 3 Others(supra)***.

15 In the circumstances of this case, it is my considered view that the intention of the Plaintiff as disclosed in the plaint, is to proceed against the 2nd, 3rd, 4th, and 5th Defendants as persons alleged to have used the 1st Defendant Company to transact with the Plaintiff.

Accordingly, this Court finds that the Plaintiff has demonstrated that she had a right as a buyer, that right was violated, and that the Defendants are allegedly
20 liable.

For the foregoing reasons, I find that the 1st preliminary objection lacks merit.

With regard to the 2nd preliminary objection, this Court finds that the letter attached as Annexure "B", indicates that a company name *Joyland Enterprises Limited* was incorporated on 3rd February, 2014 under registration number 178101.

25 A close scrutiny of the Sale Agreement attached as Annexure "A" to the 1st Defendant's trial bundle, indicates that Joyland Enterprises Ltd was part of the said agreement as the seller, and Deirdre Meya Mukweli (Plaintiff herein) as the buyer.

Accordingly, I find that the missing word LTD on the 1st Defendant's name is a
30 misnomer, which can be corrected by an amendment to the plaint, and the Defendants will not be prejudiced.

The cases cited by Counsel for the 1st, 2nd, and 3rd Defendants are distinguishable on facts, which distinction this Court will not delve into here, as the cases are not relevant to instant matter.

35 In regard to the 3rd preliminary objection, the parties herein, had filed trial bundles although without the joint scheduling memorandum on record, in preparation for scheduling proceedings as required under Order 11A Rule1(1) of the Civil Procedure (Amendment) Rules 2019, from which scheduling proceedings had commenced.

5 The purpose of summons for directions, is to ensure that all the preliminary issues in the suit (where applicable), are handled by the Registrar prior to the placement of the file before a Judge, and to curtail unnecessary delays. This purpose in my considered view was achieved in this case.

I am inclined to find that the 3rd preliminary objection is unnecessary.

10 In the result, the preliminary objections raised above by Counsel for the 1st, 2nd, and 3rd Defendants is dismissed.

Dated and delivered electronically this 27th day of April, 2023.



15 SUSAN ABINYO
JUDGE
27/04/2023

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