

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL DIVISION)
CIVIL SUIT NO. 0856 OF 2019

KALEMA JOSEPHINE NALONGO

(Suing through her lawful attorney

Semanda George William) ::::::::::::::::::::::::::::::::::: **PLAINTIFF**

VERSUS

KIIR GAI ::::::::::::::::::::::::::::::::::: **1ST DEFENDANT**

NYANDO PATRICIA ::::::::::::::::::::::::::::::::::: **2ND DEFENDANT**

BEFORE: HON. LADY JUSTICE HARRIET GRACE MAGALA

JUDGMENT

Brief facts

The Plaintiff through her representative, Semanda George William on the 3rd day of January 2012 entered into a tenancy agreement with the 1st Defendant for renting out two apartments located at Plots 26 and 27, Third Drive Lweza, (herein the suit property) for a sum of USD 39,200 per annum. At the time of instituting the suit, the Property was occupied by the 2nd Defendant. It was agreed that the 1st Defendant would pay the utility bills and necessary repairs / renovations.

The Plaintiff's claim against the Defendants jointly and severally was for the recovery of USD \$ 50,000 as rent USD \$ 4,000 as money expended on renovations of the property, interest general damages and costs of the suit.

The Defendants in their written statement of defence averred that Semanda George William had no authority to file the suit and denied allegations of indebtedness to the Plaintiff and that the cost of the renovations was agreed to be shared between the parties.



Representation

The Plaintiff was represented by Mr. Sakwa Mausso holding brief for Mr. Peter Wanda of M/s Wanda, Sakwa & Co. Advocates. The Defendants were not represented.

Hearing

The Defendants were served with summons to file a defence which they received but did not appear for the hearing of the matter. It is for that reason that the matter proceeded *ex parte* against them.

The Plaintiff relied on the following documents:

- a) A tenancy agreement dated 3rd January 2012 marked as PEXH.1;
- b) A demand letter dated 1st July 2019 marked as PEXH. 2;
- c) A letter from the 2nd Defendant dated 5/7/2019 marked as PEXH.3;
- d) A quotation to renovate the property located at Plots 26 and 27 dated 3/7/2019 marked as PEXH.4;
- e) A letter from the office of the president to LC1 chairperson dated 19/8/2019 marked as PEXH. 5;
- f) A letter from the LC1 Chairperson dated 23/08/2019 to the Defendants marked as PEXH. 6;
- g) A letter to the ambassador South Sudan dated 31/07/2019 marked as PEXH. 7; and
- h) A quotation for renovation of suit premises dated 30/05/2022 marked as PEXH.8

The Plaintiff had two witness; Semanda George William and Namuddu Jessica- a Senior Supervisor with M/s Jjuuko Construction Uganda Limited. Learned Counsel for the Plaintiff filed written submissions.

Preliminary point of law

The Defendants in their written statement of defence averred that Semanda George William had no authority to bring the suit against them. Whereas the Plaintiff did not address this in her submissions, this court cannot ignore it.

Order 3 rule 2 (a) of the Civil Procedure Rules S.1 71-1, on recognized agents and advocates states that:



"The recognized agents of parties by whom such appearances, applications and acts may be made or done are- persons holding powers of attorney authorizing them to make such appearances and applications and do such acts on behalf of parties".

The Black's Law Dictionary 11th Edition at page 1128 defines *locus standi* as:

"place of standing- The right to bring an action or to be heard in a given forum".

Halsbury's Laws of England, 4th Edition Volume 1 at pages 447 states that:

"An agent acting under a power of attorney should, as a general rule act in the name of the principal. If he is authorized to sue on the principal's behalf, the action should be brought in the principal's name. A deed executed in pursuance of such a power is properly executed in the name of the principal or with words to show that the agent is signing for him...".

A perusal of the court record both the physical file and ECCMIS shows that the power of attorney does not exist. A person suing as a lawful attorney of a party must have a document i.e. powers of attorney granting that individual the authority to institute or defend the action being raised against the donor.

In the case before court, Semanda George William ought to have attached an executed and registered power of attorney on the Plaint as proof that he was authorized to file this suit on behalf of the Plaintiff. In the absence of such a document, it simply means that he did not have the *locus standi* to bring this suit.

Locus standi is the legal capacity of a person that enables him or her to invoke the jurisdiction of the court in order to be granted a remedy. The requirement is that the *locus standi* to institute a suit must be established at the time of filing the suit. This is done by expressly pleading facts which give rise to the legal standing to institute the suit. It should not be left to court to guess where one derives the authority from. (See **Fakrudin Vallibhai Kapasi & Anor versus Kampala District Land Board & Anor, HCCS 0570 of 2015**).

K. Diagana

In the absence of an executed and registered power of attorney, I find that this suit was illegally commenced by Semanda George William. He did not have the *locus standi* and therefore no cause of action against the Defendants. The suit is hereby struck out with no order as to costs.

Dated at Kampala this 29th day of January 2024.



Harriet Grace MAGALA

Judge

Delivered electronically online (ECCMIS) this 29th day of January 2024.