

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**CIVIL SUIT NO 96 OF 2003**

**BETTY KIZITO ..... PLAINTIFF**

**VERSUS**

**DAVID KIZITO KANONYA .....DEFENDANT**

**BEFORE: HON. MR. JUSTICE J.B.A. KATUTSI:**

**RULING**

This is a preliminary objection raised by the defendant that the plaint does not disclose a cause of action against him.

I deem it better to set out brief facts as set by the plaintiff which have given raise to this objection.

Plaintiff claims that she has been a close business associate of the defendant who at the same time happens to be her uterine brother. She claims to have opened and funded several businesses over the years over which she placed defendant as manager and later as partner. It is her case that defendant has now turned against her and excluded her from the said businesses now valued to over US60,000,000/= (Sixty million).

She claims that in one business venture they purchased land now described and known as KYADONGO BLOCK 244 PLOT 5091 which they developed by erecting thereon two storied buildings on the under standing that defendant owns one of the buildings and she the other. Their common late mother left them with land held under customary tenure at Katwe which again they developed together. There are 2 blocks, block “A” consisting 3 shops, 2 flats and a store while Block B consists of 2 residential flats each with 2 bed-rooms. Currently she occupies Block “B”. About 3 years ago, so claims plaintiff the two entered into an arrangement whereby defendant introduced her to Mr. Gadandidde – Musoke to be her tenant on plot 1766 Kisugu. It

was agreed that she takes the houses in KYADONDO BLOCK 244 PLOT 1766 KISUGU as well as Block “B” on LVR 1451 FOLIO 9 PLOT 702 BLOCK “B” KATWE. It was further agreed that Defendant takes the storied houses on Block 244 plot 5091. Defendant, so plaintiff claims, went behind her back and registered the property in the names of his children. He did not stop there, but went a head to sell the whole of plot 1766 Kisugu. Because of the above complaints and grievances plaintiff prayed that judgment and decree be given in her favour for:

- a) A permanent injunction restraining the defendant, his agents, servants, workmen or any other person claiming to derive title through or under him for trespassing on the suit premises or interfering howsoever with the suit premises and from evicting or in any way disturbing the plaintiff or her tenants from the premises described in paragraph 5 (a) herein above.
- b) Subject to clause c herein below, division of assets as specified in paragraph 5 (a) herein above.
- c) Transfer of one half  $\frac{1}{2}$  the following properties in the names of the plaintiff as per their earlier arrangement:
  - (i) KYADONDO BLOCK 244 PLOT 1766 KISUGU
  - (ii) LRV 1451 FOLIO 9 PLOT 702 BLOCK “B” KATWE
- d) General damages.
- e) Interest on the decretal sum at the rate of 20% p.a. computed from the date the cause of action arose until payment in full.
- f) Costs of the suit.

And talking of paragraph 5, that para runs as follows:

“5. PARTICULAR OF DAMAGES:

- (a) The plaintiff shares in the jointly suit houses at KYADONDO BLOCK 244 PLOT 1766 KISUGU = over shs.300,000,000= KYADONDO BLOCK 244 PLOT 5091 MUYENGA = about shs.500,000,000= and LRV 1451 FOLIO 9 PLOT 702 BLOCK B KATWE = about 50,000,000= All worth over shs. 425,000,000=.
- (b) Shs.56,000,000= injected by the plaintiff purely in their joint ventures and business other than buildings.”

In answer to the above claims set out in the plaint, Defendant pleaded in paras 3 and 4 of his amended defence as follows:

“3 paragraphs 3, 4, 5 and 8 of the amended plaint are denied in toto and plaintiff shall be put to strict proof thereof.

- 4. The defendant shall at the hearing raise a preliminary objection that the plaint discloses no cause of action and hence the suit should be struck out.”

Defendant submits that the plaint consists of two claims. viz:

- a) A claim in respect of 3 pieces of land
- b) I claim in respect of other property other than real property.

He contends that the prayers in the plaint amount to an action of ejectment against the defendant from the whole said pieces of land. To that end he seeks to rely squarely on the protection which his registered claim is given by section 176 which runs as here under following:

“176: No action of ejectment or other action for the recovery of any land shall lie or be sustained against a person registered as proprietor under this Act, except in any of the following cases:-

- a) .....

- b) .....
- c) The case of a person deprived of any land by fraud as against the person registered as a proprietor of that land through fraud or as against a person deriving otherwise than as a transferee bona fide for value or through a person registered through fraud;
- d) .....
- e) .....

and in any case other than afore said the production of the registered certificate of title or lease shall be held in every court to be absolute bar and estoppels to any such action against the person named in that document as the grantee, owner, proprietor or lessee of the land described in it, any rule or equity to the contrary notwithstanding.”

Defendant contends therefore that since plaintiff did not plead fraud she has no cause of action against him.

Not so, contends plaintiff. She does not seek any ejectment or recovery of land. Her case she contends in based an agreement entered between the two for sharing their assets. Under para 3 of her plaint, it is averred that “plaintiffs’ claim against the defendant is in equity, contract and in the Tort of retinue and conversion .....

I pose to observe here that if the case is based partly on contract, I, with respect see no contractual relationship pleaded in the plaint.

An injunction is an equitable remedy. An injunction is an order or decree by which a party to an action is required to do, or to refrain from doing a particular thing. An injunction is a remedy which the court applies under proper circumstances to enforce an objection.

In this case plaintiff is seeking an order or decree of this court to order defendant to refrain from entering on the suit property or interfering “howsoever” with the suit premises and from evicting or in any way disturbing the plaintiff or her tenants from the quiet enjoyment of the premises. She at the same time prays that half of the certain property namely:

I. KYADONGO BLOCK 244 PLOT 1766 KISUGU LRV 1451 FOLIO

PLOT 702 BLOCK B KATWE be transferred into the names of the plaintiff. It is not in dispute, I think that defendant is the registered proprietor of the suit premises. In fact plaintiff concedes that in one of the properties, namely, KYADONDO BLOCK 244 PLOT 5091 the property is not only registered in the names of the Defendant but also in the names of the defendant's children as well.

The cardinal principle enshrined in section 176 R.T.A was stated by the Privy Council in the case of WAIMINA SAWMILLING CO LTD V. WAIONE TIMBER CO. LTD (1926) AC 101 and I will do no more than quote what was said there:

“The Cardinal Principle of the statute is that the register is everything, and that except in cases of actual fraud on the part of the person dealing with the registered proprietor such person upon registration of the title under which he takes from the registered proprietor has an indefeasible title against the whole world.”

It is said on behalf of the plaintiff that the claim that the plaintiff seeks ejectment of the defendant is a mere inference which does not appear in the pleadings. That may as well be so. But with respect I prefer the intent to the form. What is it, which plaintiff intends to achieve by her plaint? If a decree is made as sought by the plaintiff to “restrain the defendant, his agents, servants workmen or any other person claiming to derive title through or under him for trespassing on the suit premises ....” is not such decree decreeing defendant to get off that over which he has a registered interest? If a decree be made giving half of the property in:

1. KYADONDO BLOCK 244 PLOT 1766 KISUGU
2. LRV 1451 FOLIO 9 PLOT 702 BLOCK B KATWE, will not have plaintiff recovered half of the property registered in defendant's names?

With the greatest respect, I think it is all a matter of semantics.

In my opinion plaintiff is precluded from recovering in this form of action unless she pleads fraud, for that would be to commit an assault on section 176 R.T.A. For there to be a cause of action plaintiff had to bring her action under the exceptions in section 176 R.T.A. She did not.

I now turn to the claim under movable property. O6 r1 of the Civil Procedure Rules runs as follows:

- “1. Every pleading shall contain, and contain only, a statement in concise form of the material facts on which the party pleading relies for claim or defence, as the case may be, but not evidence by which they are to be proved, and shall, when necessary, be divided into paragraphs ...”

In paragraph 4 (b) of her plaint, plaintiff pleads as follows:

- “b. The plaintiff opened and funded several businesses such as Salama Road shop, Alpha Agencies, Buwule Shop, and Nestle Distributors Ltd, over the years whereby she put the defendant as manager and later partner but the defendant has now excluded the plaintiff from the business, which is now over she.60,000,000=.

Then under paragraph 5 (b) she pleads as follows:

- “5. PARTICULARS OF DAMAGES.
  - b. Shs.56,000,000/= injected by plaintiff purely in their joint ventures and business other than buildings.”

Then in paragraph 8 (b) of her plaint she makes the following prayer

- “b. Subject to clause c. herein below, division of assets as specified in paragraph 5 (a) here in above.”

Under clause C. she pleads as follows:

- c. Transfer of one half  $\frac{1}{2}$  the following properties in the names of the plaintiff as per their earlier provisional arrangement:
  1. KYADONDO BLOCK 244 PLOT 1766 KISUGU “LRV 1451 FOLIO 9 PLOT 702 BLOCK B KATWE.”

And lastly in paragraph 5 (a) she pleads as follows:

- (a). The plaintiff shares in the jointly built houses at KYADONDO BLOCK 244 PLOT 1766 KISUGU = over 300,000,000/=.

KYADONGO BLOCK 244 PLOT 5091 MUYENGA = about shs. 500,000,000/= and  
LRU 1451 FOLIO 9 PLOT 702 BLOCK B KATWE = about shs. 50,000,000/= All worth  
over shs. 425,000,000/=.

With the greatest respect the whole thing appear not to make sense. The more one reads through, the more the brains feel addled.

I agree with the defendant that plaintiff does not make clear what she is claiming. The above paragraphs on movable property do not disclose a cause of action.

All in all I am of the humble view that the preliminary point of objection ought to succeed and it accordingly succeeds with costs to the defendant.

J.B.A. Katutsi

**JUDGE**

