

**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT KAMPALA  
(LAND DIVISION)  
CIVIL SUIT NO. 99 OF 2005**

**JOHN SEBATAANA   :~::~:~::~:~::~:~::~:~::~:   PLAINTIFF**

**Suing through his Attorneys**

- 1. SENTONGO MUSAALA**
- 2. MUWANULA RICHARD**
- 3. BATAANA SENTONGO**
- 4. NAKAMARIRA P. DIANA**

**VERSUS**

<ul style="list-style-type: none"> <li><b>1. ABANENAMAR YOROKAM</b></li> <li><b>2. FRANCIS LWANGA</b></li> </ul>	}	<p><b>:~::~:~::~:~::~:~::~:~::~:</b></p>	<p><b>DEFENDANTS</b></p>
--	---	--	--------------------------

**RULING BY HON. MR. JUSTICE JOSEPH MURANGIRA**

On 23<sup>rd</sup> November 2009, when the suit came up for scheduling conference, counsel for the defendants, Mr. Richard Mwebembezi of Bamwe & Co. Advocates raised two preliminary objections; namely:-

- (1) That the plaintiff did not state the value of the subject matter. That failure to disclose the value of the subject, the suit would be in the jurisdiction of the Chief Magistrate's Court.
- (2) That the plaintiff was suing through Attorney's that yet there was no power of attorney annexed to the pleadings. That therefore, the plaintiff does not disclose a cause of action against the defendants.

In reply, Counsel for the plaintiff, Mr. Lubega Matovu argued that the issue of failure to disclose the value of the subject matter, the court on its own discretion could allow the plaintiff to amend his pleadings. Further, he argued that failure to annex the document, the powers of attorney, raises an issue of locus, the basis on which the plaintiff can utilize to sue. That the cause of action is well laid down in the pleadings and that the particulars of are particularized in the plaintiff. He then prayed to be allowed to amend the plaintiff.

On the 1<sup>st</sup> preliminary objection, Counsel for the plaintiff agrees that the plaintiff did not disclose the value of the suit property. The particulars to be contained in the plaintiff are governed by Order 7 of the Civil Procedure Rules. Order 7 rule 1 (i), the plaintiff, among other particulars provided in that rule, states that:-

***“The plaintiff shall contain the following:***

**(a)** .....

.....

**(b) A statement of the value of the subject matter so far as the cases admits.”**

I have looked at the plaintiff, and indeed the value of the suit property is not stated. That, therefore, offends order 7 rule 1 of the Civil Procedure Rules (CPR). From this finding another issue arises, that is, whether the plaintiff could be rejected on the ground of failure to state in the plaintiff the value of the subject matter. Order 7 rule 11 of the CPR provides the grounds for rejecting the plaintiff. It reads:-

“0.7 r 11 of the CPR:-

The plaintiff shall be rejected in the following cases:-

- (a) where it does not disclose a cause of action;
- (b) where the relief claimed is undervalued and the plaintiff, on being required by the court to correct the valuation within a time to be fixed by the Court, fails to do so;
- (c) Where the relief claimed is properly valued by insufficient fee has been paid, and the plaintiff, on being required by the court to pay the requisite fee within a time to be fixed by court, fails to do so;
- (d) Where the suit appears from the statement in the plaintiff to be barred by any law;
- (e) Where the suit is shown to be frivolous and vexatious.”

The objection raised is none of the above. Therefore, in spirit of Order 7 rule 9 (3) of the CPR, which reads:-

***“the Plaintiff may, by leave of the Court, amend the statements so as to make the response with the plaintiff.”***

I so agree with the submissions by Counsel for the plaintiff that the plaintiff could be amended to state the value of the subject matter. In such circumstances, I would rather send

the suit to the Chief Magistrate's Court which has jurisdiction in Civil matters ranging from the matters which do not require to be valued like in the cause of action of trespass up to shillings 50, 000,000/= (fifty millions shillings). To that extend the first objection succeeds.

On the second preliminary objection, which is to the effect that a failure to annex on the plaint the powers of attorney, the plaint does not disclose the cause of action against the defendants.

Mr. Lubega Matovu, Counsel for the plaintiff in reply submitted that failure to annex the document like in this case the power of attorney raises an issue of locus, the basis on which the plaintiff can utilize to sue. That the cause of action is well laid down in the pleadings and the particulars of fraud are particularized in the plaint. That the plaintiff be allowed to amend the plaint in that regard.

The point which is clear to all parties is that the alleged powers of attorney is not annexed to the plaint. The submissions of counsel for the plaintiff suggest that the plaintiff is in possession the said powers of attorney. Order 7 rule 14 (1) of the CPR provides that:-

***“where a plaintiff sues upon a document in his or her possession or power, he or she shall produce it in court when the plaint is presented, and shall at the same time deliver the document or copy of it to be filed with the plaint.”***

In the instant suit, the powers of attorney which gives the plaintiff the basis to sue the defendants is not annexed to the plaint. Counsel for the plaintiffs was graceful enough when he recognized that the power of attorney which was missing would have been the basis to sue the defendants. I, therefore, hold that the attorneys have no authority to sue the defendants. The attorneys, further, have no cause of action against the defendants. Wherefore, the attorneys instituted a suit against the defendants unlawful. Thus, the plaint without plaintiffs cannot be sustained in law and that the same cannot be amended. In the result, I uphold the 2<sup>nd</sup> preliminary objection in the affirmative.

Finally, on the basis of the 2<sup>nd</sup> preliminary objection, HCCS N0. 99 of 2005 is dismissed with costs to the defendants.

Dated at Kampala this 12<sup>th</sup> day of March, 2010.

---

**JOSEPH MURANGIRA**  
**JUDGE**