

THE REPUBLIC OF UGANDA
IN THE HIFGH COURT OF UGANDA AT KAMPALA
LAND DIVISION
CIVIL SUIT NO. 208 OF 2006

KITAZIGOLOKWA GROWERS

COOPERATIVE SOCIETY LTD.....PLAINTIFF

VERSUS

1. RURUNGURU JOHN

2. JACKSON KASHAIJA

3. WILLIAM YEBARE.....DEFENDANTS

BEFORE HON. LADY JUSTICE PERCY NIGHT TUHAISE

RULING

After conclusion of the scheduling conference on this matter, Paul Kuteesa learned Counsel for the defendant raised a preliminary objection (PO) that the plaint does not disclose a cause of action against the defendants jointly. He prayed that it be should be struck off and the suit be dismissed with costs under Order 7 rule 11(a) of the Civil Procedure Rules. He based his objection on two grounds. The first was that the plaintiff at the time of filing the suit did not have any interest in the suit land. He referred to paragraph 4(a) of the plaint where the plaintiff alleged that he is the registered proprietor of land comprised in Singo Block 753 Plot 5 land at Kalewere Kyankwanzi (suit land). He submitted that annexure **A** to the said plaint and the leasehold agreement show that it is a certificate of title granted for leasehold land for a period of 5 years from 1st October 1998. He contended that the lease expired on 31st October 2003 and by

6th October 2006 when the plaintiff instituted the suit, he had no interest in the suit land. He argued that a lease is a form of tenure which lasts for a defined period as defined under section 2(5) of the Land Act cap 227. The second was that at the time the plaintiff is alleged to have acquired the suit land, the plaintiff who is a corporate entity was not in existence. He submitted that at the time the plaintiff is alleged to have acquired the suit land the plaintiff who is a corporate entity had not yet been registered and thus the lease agreement is a pre incorporation transaction to which the plaintiff is not privy and cannot base upon it to found a cause of action. He argued that the plaintiff was a cooperative society which acquired corporate status on on 1st October 2004 when it was registered. That it could not have entered into a lease agreement with Kiboga District Land Board neither could it have acquired a certificate of title as it was not yet in existence at the time. He cited **Auto Garage V Motokov (No. 3) [1971] EA 514; Jeraj Sharif V Chotai Fancy Stores [1960] EA 374; Dr. Arinaitwe & 37 Ors V Inspectorate of Government HCCS No. 0439 of 2007 (unreported)** and **Nec & 2 Ors V Nile Bank Ltd SCCA 17/1994** to support his contentions.

Counsel Rwalinda Godfrey for the plaintiff opposed the PO and prayed that it be rejected to allow the parties proceed with the case on merit. He submitted that at the time of acquisition of the suit land the plaintiff was a body corporate as it was initially issued with a certificate of registration on 27th November 1986 under the Cooperative Societies Act of 1970 as evidenced by annexure **A** to the submissions. That the society eventually moved its operations in Kiboga district and duly obtained a certificate to carry out its functions among others community development as evidenced by a certificate annexed as **B** to the submissions. That after the amendment of the Corporative Societies Act to the Corporative Societies Statute of 1991, the society was further mandated to surrender the old certificate of registration to the Registrar of Cooperatives. He was duly issued with another certificate on 7th January 2004 annexed as **C** to the submissions. He contended that the plaintiff was a legal person at the time the suit was filed. He also submitted that the plaintiff had equitable and legal interest in the suit property at the time of filing the suit. He submitted that the defendants obtained a court order that barred the extension of the plaintiff's lease. He argued that the plaintiff's interest in land as former lessee and sitting tenant/occupant of the suit land still stands and is not vitiated by the expiration of the initial lease. He cited **National Housing and Construction Corp V Kampala District Land Board & Chemical Distributors SCCA No, 2/2004** to support his position.

Counsel Paul Kuteesa in rejoinder contended that in determining the question of whether the plaint discloses a cause of action court has to look at the plaint and its annexures alone and not other documents and extrinsic matters. He submitted that the the annexures purportedly introduced by Counsel in his submissions are extrinsic to the plaint, and that looking at the plaint and its annexures, it is clear the cooperative society was registered on 7th January 2004. He submitted that the cooperative society purportedly registered in 1988 is different from the plaintiff society which was registered in 2004. He also submitted that the Cooperative Societies Statute now cap 112 Laws of Uganda did not contain a requirement for re registration or de registration of existing cooperative societies. He argued that if Kitazigolokwa Growers Cooperative Society Ltd was de registered with the coming into force of the Cooperative Societies Statute 1991, it ceased to exist in that date and could not acquire land and sign a lease when it was not in existence. He argued that between 1991 and 2004 the plaintiff had not re registered and was therefore not in existence at the time the suit land was acquired or the lease agreement executed or certificate of title obtained. He maintained that even if the plaintiff had equitable rights in the suit land, the suit is not premised on the enforcement of equitable rights but on legal rights as registered proprietot of the suit land. He argued that the plaintiff does not accordingly possess the legal rights it alleges to possess and on the basis of which the suit was filed and that as such the suit discloses no cause of action. He finally submitted that since no renewal of a lease was ever obtained by the plaintiff to the suit land he ceased to be a lessee of the land and a registered proprietor.

I have carefully considered the pleadings and Counsel's submissions, together with the authorities on this matter.

The question to address is whether the plaint discloses a cause of action. A cause of action means every fact which is material to be proved to enable the plaintiff to succeed. It has been established through case decisions that in order to prove that there is a cause of action, it is necessary for the plaintiff to establish in the plaint three essential elements, namely that:-

- (a) The plaintiff enjoyed a right;
- (b) The right has been violated; and
- (c) The defendant is liable.

If all the three elements are present in the plaint then a cause of action is disclosed and any defect or omission can be put right by amendment. See **Tororo Cement Company V Frokina International Ltd Civil Appeal No. 2 of 2001** and **Auto Garage & Others V Motokov (No. 3) [1971] EA 514**, PER Spry VP at 519.

In disclosing whether or not a suit discloses a cause of action, one looks, ordinarily, only at the plaint and assumes that the facts alleged in it are true. This was so stated by Spry Ag P in **Attorney General V Oluoch [1972] EA 392, at 394**. In **Sullivan V Mohamed Osman [1959] EA 239 (CA) (T)**, **Windham J A, at p.244**, in the same connection, stated that;

“The plaint must allege all facts necessary to establish the cause of action. The fundamental rule of pleading would be nullified if it were to be held that a necessary fact not pleaded must be implied because otherwise another necessary fact was not pleaded and could not be true.”

I may also state here that, according to decided cases, an application to strike out a pleading can only be made where it can be shown that the pleading discloses no cause of action or defence on the face of it, without extrinsic evidence. This was so stated by Smith L J in **AG of Duchy V London & North Western Railway Co (1892) 3. Ch. 279**. In the same spirit of the law, Sir Charles Newbold in **Mukisa Biscuit Manufacturing Co V West End [1969] EA 696, at 701** stated that:-

“ A preliminary objection raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is extrinsic evidence of judicial discretion.”

The principle, as I understand it, is that court will use its inherent powers to strike out a plaint or written statement of defence where the defect is apparent on the face of the record and where no amount of amendment will cure the defect. The procedure is intended to stop proceedings which should not have been brought to court in the first place and to protect the parties from continuance of futile and useless proceedings.

Applying the foregoing legal authorities to the instant case, the plaint has to show, first, that **the plaintiff enjoyed a right**. This is shown in paragraph 4(a), (b), (c) & (d) and 11 of the plaint

where the plaintiff pleads that it was at all material times the registered proprietor of the suit land, with a copy of the title annexed as **A**, then further sets out the processes of how the plaintiff acquired and developed the suit land.

Secondly, the plaint must show that **the right has been violated**. This is shown in paragraphs 3, 8, 9, 10, 12 and 14 of the plaint where the plaintiff alleges that the defendants forcefully drove out the plaintiff's cattle from the suit land, occupied it and constructed illegal structures on it, and fraudulently blocked the plaintiff from renewing the lease.

Thirdly, the plaint must show that **the defendant is liable**. This is shown in paragraphs 8, 9, 10, 12, and 14 of the plaint which alleges that the defendants committed the acts complained of in the plaint. In my opinion, the three elements as set out in **Tororo Cement Company V Frokina International Ltd Civil** and **Auto Garage & Others V Motokov (No. 3), supra**, are present in the plaint in the instant case. I find that the plaint pleads facts which allege that the plaintiff has a claim to the land, legal or equitable, and that the defendants have illegally occupied the said land which has allegedly inconvenienced such plaintiff due to non use of the land.

With respect, I find the defendant Counsel's submissions about the plaintiff having no interest in the suit land when it instituted the suit, and about the plaintiff not being in existence when it acquired the suit land, to be matters that would require this court to delve into extrinsic evidence. Counsel himself rightly acknowledges in his submissions that extrinsic evidence is not called for in addressing questions of whether a plaint discloses a cause of action. The matters he raised are matters to be raised by way of defence, in proof of which, evidence can only be adduced during the hearing of the case on the merits. Addressing them at this point as a basis for determining whether or not a cause of action is disclosed in a plaint would tantamount to delving into extrinsic evidence. Indeed learned Counsel for the plaintiff in his response also alluded to extrinsic matters to challenge or disprove the PO. Delving into extrinsic matters would defeat the nature of a Preliminary objection which as highlighted above should raise a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is extrinsic evidence of judicial discretion.

This court therefore only looked at the plaint to determine whether or not a cause of action has been established by the plaintiff against the defendants. Court has established that the plaint pleads facts which allege that the plaintiff is a body corporate which has a claim to the land, legal or equitable, and that the defendants have illegally occupied the said land which has inconvenienced such plaintiff due to non use of the land. In doing this court assumed that the facts as alleged in the plaint are true. In my opinion, this is enough, purely for purposes of establishing whether a cause of action is disclosed in the plaint against the defendant.

As to whether or not the cause of action is eventually proved against the defendants is an entirely different matter which can only be determined by adducing evidence in the course of hearing the case. It is immaterial at this point that the allegations are true or not, as that is a matter to be determined after hearing the case on the merits. In this particular case, court would only be able to determine whether the plaintiff was an existent legal personality or if it had interest in the suit property at the time of instituting the suit as it claims in the plaint by calling for evidence.

Court can only assume that what the plaintiff alleges and pleads in the plaint is true, as required by the relevant legal authorities on the issue. Besides, as indicated in the authorities cited above, this PO cannot be raised if any fact, as is the case in the instant case, has to be ascertained or if what is sought is extrinsic evidence of judicial discretion.

In the premises, and for the reasons given above, I do not find merit in the preliminary objection.

I accordingly overrule it with costs.

Dated at Kampala this 1st day of November 2012.

Percy Night Tuhaise

JUDGE.