THE REPUBLIC OF UGANDA,

IN THE HIGH COURT OF UGANDA AT MUKONO

CIVIL SUIT NO. 271 OF 2018

(FORMERLY JINJA HIGH COURT CIVIL SUIT No. 153 OF 2016)

YUKIO INVESTMENT COMPANY LIMITED ::::::::::::::::::::::::PLAINTIFF

VERSUS

1. **ADMINISTRATOR GENERAL**
2. **COMMISSIONER LAND REGISTRATION ::::::::::::::DEFENDANTS**

BEFORE HON. LADY JUSTICE FLORENCE NAKACHWA

RULING

1. This is a ruling on a preliminary objection on a point of law raised by the 1st Defendant to the effect that the Plaintiff has no *locus standi* to sue the Defendants and that there is no cause of action against the Defendants.

Background

2. On 13th November, 2013, the Plaintiff purchased a 99-years leasehold interest from Ssekibaala Godfrey, Najjuma Victor and Ssemakula Suzane who were the then registered proprietors of the land formerly known as Kyaggwe Block 70 Plot 36, land at Nsambya. This lease was not registered with the office of the Registrar of Titles. On 1st July, 2014,

the 1st Defendant lodged a complaint with the 2nd Defendant detailing the irregular creation of a title for the suit land and illegal registration of Ssekibaala Godfrey, Najjuma Victor and Ssemakula Suzane as proprietors of this land.

3. The 2nd Defendant called a public hearing and proceeded to revoke the registration of Ssekibaala Godfrey, Najjuma Victor and Ssemakula Suzane as proprietors of the suit land for several irregularities and illegalities in the creation of the title as well as the registration of Ssekibaala Godfrey, Najjuma Victor and Ssemakula Suzane. The grounds for revocation were that:

   (a) the title was created against the well established procedures of the mailo office as it had no root;

   (b) the title was created for one Ssemu Musoke out of a blue page on which he no longer had any interest, the whole of his 16.20-hectare interest having been surveyed, his blue page closed and acreage transferred to a white page under Kyaggwe Block 70 Plot 35;

   (c) the whole of Semu Musoke's interest had thereafter been transferred into the names of the Administrators of his estate who gradually disposed of the entire interest;

   (d) the said Semu Musoke for whom a White Page was created for Kyaggwe Block 70 Plot 36 (the suit land) and who purportedly transferred it to Ssekibaala Godfrey, Najjuma Victor and Ssemakula Suzane by a transfer purportedly executed on 29th November, 2011

had long been deceased and his estate was administered by Samwiri Kitunzi under Administration Cause No. 36 of 1997; and

(e) there is no way this same person who was a deceased by 1997 could have risen from the dead and entered into a transaction with Ssekibaala Godfrey, Najjuma Victor and Ssemakula Suzane in 2011.

4. Following the directive given by this court dated 14th April, 2019, this preliminary objection was raised through written submissions filed by Counsel Robert Bogere from the Administrator General's Legal Department for the 1st Defendant on 16th October, 2019. An affidavit of service dated and filed on 31st January, 2020 showing effective service of the Plaintiff's counsel namely, M/s AEGIS Advocates, with the written submissions on preliminary objections on the point of law is on court record. However, the Plaintiff did not reply to the preliminary objection. Therefore, this court shall proceed to analyse the preliminary objection as submitted by the 1st Defendant's counsel and make a decision.

5. According to the 1st Defendant's counsel, this suit was first filed at Jinja by the current Plaintiff. That when they raised a preliminary objection that the Plaintiff had no locus to sue for land in respect of which he had never been registered as proprietor, it had the plaint amended and added Ssekibaala Godfrey, Najjuma Victor and Ssemakula Suzane as Plaintiffs. That when the matter was transferred from Jinja to Mukono, in due course, Ssekibaala Godfrey, Najjuma Victor and Ssemakula

Suzane who were the registered proprietors of the suit land at the time of the cancellation of title withdrew their suit against the Defendants.

6. That the Plaintiff, in its pleadings asserted that it purchased a leasehold interest for 99 years out of the title for Kyaggwe Block 70, Plot 36, land at Nsambya. That it claimed to have purchased this interest from Ssekibaala Godfrey, Najjuma Victor and Ssemakula Suzane according to its amended plaint and summary of evidence. That this lease was not registered with the Land Registry as per the Plaintiff's plaint.

7. Counsel submitted that it is trite law that any instrument that is not registered cannot create legal rights in respect of a title particularly against a third party who had no notice of it. That such document when based upon a contract of purchase as in this case creates rights in *personum* enforceable against the parties to the contract and those who claim under it. Further, that in decided cases, courts have held that the interests created by such an unregistered instrument are enforceable 'inter parties' to draw a sharp distinction with rights created by or under a registered instrument that the courts have held to be enforceable as against the whole world (right in rem).

8. The 1st Defendant's counsel referred to the case of **Somali Democratic Republic v. Treon, Civil Appeal No. 4 of 1988** cited with approval in **Steven Kalani v. Satwant Kaur, Supreme Court Civil Appeal No. 22 of 1995**, where court held that an unregistered instrument cannot confer rights as against third parties with no notice thereof but operates as a contract inter-parties and can confer an

equitable right to specific performance of the contract. (see **Ndigejjerawa v. Kizito & Kubulamwana, (1957) 7 ULR 31**).

9. Counsel contended that although the Plaintiff purchased a leasehold interest from Ssekibaala Godfrey, Najjuma Victor and Ssemakula Suzane, it never obtained a legal interest in the suit land because his transfer was never registered. That it never took it to the Land office or lodged a caveat. That both Defendants had no notice of the existence of the Plaintiff before and during the process of cancellation of the title of Ssekibaala Godfrey, Najjuma Victor and Ssemakula Suzane. Counsel asserted that the 2nd Defendant was enjoined under section 91 of the Land Act only to summon the registered proprietor and the complainant/ 1st Defendant.

10. It was further averred for the 1st Defendant that when the title for the suit land was cancelled, the Plaintiff suffered no legal or actionable injury at the hands of or by the actions of the Defendants because they were not aware of his rights and could not therefore be faulted at having violated what they did not know to exist. That they could not reasonably foresee him and that the Plaintiff purchased his leasehold interest on 13th November, 2013 as per its own averments in the plaint but the title was cancelled on 21st June, 2016. In addition, that this was three years after the alleged purchase yet the Plaintiff never even lodged a caveat on the title, an action that would have placed the Defendants on notice of its interest. That if it had done so, the Defendants would have summoned him for the public hearing under section 91 of the Land Act.

11. Furthermore, learned counsel argued that the title that was cancelled having been registered in the names of other people not being the Plaintiffs in this case, the Plaintiff has no locus to bring this suit. (**see Fenekansi Kiwanuka v. Malkit Sing Sondo, HCMA No. 163 of 2004 & John Sebatana v. Abeinenama Yokoramu, HCCS No. 99 of 2005**). That the Plaintiff has never owned the suit land and it is a stranger to an action against third parties arising out of the suit land in so far as the instrument under which he claims was not registered with the Land office.

12. Learned counsel added that *locus standi* is intrinsically related with the cause of action in any given suit to enable a Plaintiff move court. That in the instant case, the Plaintiff is neither a registered owner nor a kibanja holder on the suit land. Also that the Plaintiff is neither the spouse of the former registered proprietor nor holder of a registered mortgage or any other charge registered in respect of the suit land. That since it holds no registrable interest in the suit land, it is a stranger.

13. That the Plaintiff can only sue those who sold to him the suit land and that he cannot sue the Defendants who are third parties without notice of his claim because the title to the suit land never became his. That the Defendants were not parties to the Plaintiff's agreement and did not know its existence. Counsel stated that surprisingly, the Plaintiff in its plaint has no claim against those who sold to it the suit land yet its purchase agreement contains the standard provisions as to

compensation by the vendors in cases of adverse claims to the land that was being sold to him.

14. Counsel added that the Plaintiff cannot deceive this court that it is the Defendants who prevented it from registering its lease or lodging a caveat in those three years after the purchase but before cancellation of the certificate of title was done. That he has no locus to bring this suit relating to land that he has never owned and that its equity lies against those who sold to it the suit land.

15. Counsel invited court to hold that the Plaintiff has no cause of action against the Defendants and further argued that the decisions in the cases of **Souza Figueiredo & Co. Ltd v. Moorings Hotel Co. Ltd, [1960] E.A 926** and **Auto Garage v. Motokov (1971) EA 514** are to the effect that an unregistered instrument cannot be the basis of a cause of action against third parties who had no notice of the same. That in the instant case the Plaintiff has no right against the Defendants who acted without notice of the Plaintiff's unregistered interest and that having had no notice of the Plaintiff's purchase of a lease cannot violate what they did not know.

16. Further, that as to the 3rd condition for existence of a cause of action, counsel invited this court to agree with the decision of **Souza Figueiredo & Co. Ltd v. Moorings Hotel Co. Ltd** (supra) that unregistered interests operate as contracts inter-parties and cannot find an inter-parties action to determine liability. That liability for the damage suffered by the Plaintiff lies at the feet of those who sold to it

the suit land not third parties who were not parties to and had no notice of the sale.

17. It was concluded for the 1st Defendant that both the Registration of Titles Act and decided cases binding on this court confer on the Plaintiff only one right to bring its action against the persons who sold to it the suit land or those who had notice of its equitable interest. That these are the people it should look to as per its agreement with them that they would compensate it for its losses in the event of 3rd party claims. That there is no substantial matter to be tried and that even if there was, the Plaintiff has zero likelihood of success. He prayed that this court dismisses the suit with costs.

Issues

(1) Whether the Plaintiff has *locus standi* to sue in Civil Suit No. 271 of 2018.

(2) Whether Civil Suit No. 271 of 2018 discloses a cause of action.

18. Both issues will be considered concurrently since the resolution of one leads to automatic resolution of the other.

19. Whereas courts of Judicature are under Article126 (2) enjoined to administer justice in conformity with the law and the values, norms, and the aspirations of the people of Uganda, in the same vein under section 33 of the Judicature Act, Cap. 13, the inherent powers of the High Court are conferred subject to the law. This means that the parties seeking justice before the Ugandan courts

must present their cases in compliance and conformity with both substantive and procedural laws.

20. Therefore, before a litigant seeks to invoke the inherent powers of the court or its discretion or exercise of its general powers as to remedies, it is often incumbent upon the party coming before the court to ensure that he or she is clothed with the appropriate ability to move court and to set the law in motion otherwise court would strike out and dismiss or discontinue such suits.

21. *Locus standi* in law is the right to bring an action. The principles of *locus standi* or standing determine who is entitled to bring up a particular dispute before the courts. They can thus be distinguished from the principles which determine whether a particular matter is suitable for adjudication in the courts, whether a particular matter is one of public law and what proceedings may be used to challenge the decision. The principles of *locus standi* have the function of determining which interests merit access to the courts. It is a set of principles that governs whether an individual or group may bring an action in court with respect to a specific issue.

22. For one to be clothed with *locus standi* to bring a suit, he or she has to demonstrate by his or her pleading that he or she has a cause of action which is achievable. As a matter of fact, he or she must point at a reasonable causation of the injury he or she has suffered and that he or she has an automatic standing by operation of law to warrant redress-ability.

23. A cause of action was defined in the case of **Read v. Brown (1888) 22 QBD 128** at page 131 as "*every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the Court.*"

24. Under Order 7 rule 11 (a) of the Civil Procedure Rules, S.I 71-1 it is stated that a plaint may be rejected by the court if it does not disclose a cause of action. In **Auto Garage v. Motokov (No.3) [1971] E.A 514** at page 519 Spry, V-P said:

> *"I think the plaint may disclose a cause of action even though it omits some fact which the rules require it to contain and which must be pleaded before the plaintiff can succeed in the suit. In* ***Cottar v. Attorney General of Kenya (1938) 5 E.A.C.A****. 18 it was said by Sir Joseph Sheridan, CJ. that "what is important in considering whether a cause of action is revealed by the pleadings is the question as to what right has been violated". In addition, of course, the plaintiff must appear as a person aggrieved by the violation of the right and the defendant as the person who is liable. I would summarize the position as I see it by saying that if a plaint shows that the plaintiff enjoyed a right, that the right has been violated and that the defendant is liable, then, in my opinion, a cause of action has been disclosed and any omission or defect may be put right by amendment. If on the other hand, any of those essentials is missing, no cause of action has been shown and no amendment is permissible."*

25. The Court of Appeal in **Kapeka Coffee Works Ltd v. NPART, CACA No.3 of 2000** held that:

> *"In determining whether a plaint discloses a cause of action, the court must look at only the plaint and its annexures if any and nowhere else."*

26. In order to prove that there is a cause of action, the plaint must show that the Plaintiff enjoyed a right; that the right has been violated; and that the Defendant is liable. If the three elements are present, a cause of action is disclosed and any defect or omission can be put right by amendment. See **Tororo Cement Co Ltd v. Frokina International Ltd, Civil Appeal No. 22 of 2001**.

27. I have perused the Plaintiff's plaint and its annexures and find that the case is in relation to rights and interest in land. The concept of ownership of land is an aggregation of a number of rights, including: the right to possession; the right to control; the right to its use and quiet enjoyment; the power to allow others a right to use (licenses and leases); the right to privacy and to exclude others; the right to disposition or to transfer the land to someone else by selling, gifting or inheritance; and the right to use the land as collateral through a mortgage.

28. Prospective purchasers of land have two primary concerns; to establish whether the vendor has the right to sell the land in question and secondly, whether there are any third party rights to the land which

may interfere with their intended use of the land. With respect of unregistered land, the principle followed is that an owner cannot transfer more entitlements or rights than he or she had himself or herself. Therefore, there should be a preceding owner that is transferring certain rights in the property to the new owner.

29. In the case of unregistered land, there is no central register and as such, the burden is on the buyer to ascertain whether the land has been properly conveyed over the years and that the current vendor is the party to whom it was last vested in. This requires a thorough examination of the vendor's title from the root title onwards. The prospective buyer must undertake such inquiries and make such inspections of the land that would satisfy a reasonably prudent person including a thorough physical investigation of the land and questioning any occupants as to their rights. A purchaser will have constructive notice of any rights reasonably discoverable by inspection of the property, and, in particular, from enquiry of any occupier as to his or her interests and those of which he or she holds it.

30. In my view, a lease of 99 years ought to be registered to have any legal effect on third parties. Under English law, unregistered leases for a period of more than seven years do not affect third parties.

31. In the present case, on the 31st October, 2018 Ssekibaala Godfrey, Najjuma Victor and Ssemakula Suzane who were the 2nd, 3rd and 4th Plaintiffs in Civil Suit No. 271 of 2018, wholly discontinued and withdrew their case against both Defendants leaving only the 1st

Plaintiff as the sole claimant in the case. The Plaintiff pleaded in paragraph 5 of the plaint that on or about the 13th November, 2013, it entered into a lease agreement with Ssekibaala Godfrey, Najjuma Victor and Ssemakula Suzane for 99 years and took possession of the suit land.

32. Further, that before it could obtain a title for the leasehold interest or transfer the land into its names, the 2nd Defendant acting upon a complaint of the 1st Defendant purported to amend the register by cancelling the title. That the Plaintiff lawfully acquired the land and lease and that the Defendants' activities on the same were unlawful and only intended to fraudulently dispose of the suit land. That the 2nd Defendant is estopped from cancelling the title as it confirmed to the Plaintiff of the ownership of the land by Ssekibaala Godfrey, Najjuma Victor and Ssemakula Suzane.

33. The lease agreement attached to the plaint as Annexure "A" clearly shows that the lease transaction was between the Plaintiff and Ssekibaala Godfrey, Najjuma Victor and Ssemakula Suzane who have already withdrawn from the case. It is further clear that the said lease was not between the Plaintiff and the Defendants who are parties to this suit. This means the Defendants are third parties to the transaction between the Plaintiff and Ssekibaala Godfrey, Najjuma Victor and Ssemakula Suzane.

34. In my judgment, the withdraw from this suit by Ssekibaala Godfrey, Najjuma Victor and Ssemakula Suzane against the

Defendants is a concession to the 1st Defendant's complaint to the Land Registry and the 2nd Defendant's cancellation of title. The Plaintiff's claim against the Defendant, if any, is only sustainable through Ssekibaala Godfrey, Najjuma Victor and Ssemakula Suzane from whom it purchased the suit land and whose names are cancelled from the certificate of title.

35. From the Plaintiff's pleading, there is no link between the Plaintiff and the Defendants to entitle it sue the Defendants hence no injury caused to the Plaintiff by the Defendants. As stated by the 1st Defendant's counsel in his submission, the Plaintiff's cause of action is only maintainable against Ssekibaala Godfrey, Najjuma Victor and Ssemakula Suzane who purported to have sold the suit land to it yet they were well aware the land did not belong to them.

36. Pursuant to the foregoing, this court is satisfied with the 1st Defendant's submission that the Plaintiff has no *locus standi* to sue the Defendants. It is also this court's holding that the Plaintiff has no cause of action against the Defendants. Therefore, this suit is hereby dismissed with costs to the Defendants.

I so rule and order accordingly.

This ruling is delivered this ..23rd..... day of ..Jan..... 2023 by

FLORENCE NAKACHWA

JUDGE.

In the absence of the parties but in the presence of Ms. Pauline Nakavuma, the Court Clerk.

