

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT FORT PORTAL
CIVIL SUIT NO 0019 of 2019

5 **MUSA CANON**

PLAINTIFF

VERSUS

UGANDA WILDLIFE AUTHORITY

DEFENDANTS

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BEFORE HON. JUSTICE DAVID S.L. MAKUMBI

Plaintiff represented by Counsel Samuel Muhumuza

Defendant represented by Counsel Ali Luzinda

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BACKGROUND:

This a ruling on a preliminary objection raised by the defendant in this matter to the effect that the plaint does not disclose a cause of action and that as such the suit should be dismissed.

20 By way of background, the Plaintiff Musa Canon, a farmer under the Mubuke Irrigation Scheme in Kasese, filed a suit before this court against the Defendant Uganda Wildlife Authority.

The particulars of the Plaintiff's suit are based upon a claim for compensation for damage to crops worth UGX 92,000,000, general damages and costs of the
25 suit with interest from date of judgment till full payment. The Plaintiff claimed that the damage to his crops was caused by elephants on the night of 7th August 2018 and that the elephants were in the custody and responsibility of the Defendant.

30 The Plaintiff claimed that after the damage caused by the elephants, he along with other victims of the damage visited the scene of the damage with the Agricultural Officer of Kasese district and that a valuation report of the damages was prepared. A copy of the valuation report and the applicable Kasese District approved rates of compensation were annexed to that Plaintiff as "A" and "B" respectively.

35 In relation to the foregoing facts presented by the Plaintiff, the Defendant raised a preliminary objection to the effect that the Plaintiff had not disclosed a cause of action.

DEFENDANT'S SUBMISSIONS CAUSE OF ACTION:

40 Counsel for the Defendant Mr. Ali Luzinda submitted that the plaintiff did not disclose a cause of action and premised his arguments as follows.

Counsel argued that Clause 4 of the Plaintiff outlining the particulars of the Plaintiff's claim only stated that the defendant had custody and responsibility for the elephants. It had not been stated anywhere that the Defendant had a duty of care towards the Plaintiff or that the Plaintiff had a right which was
45 breached.

Counsel further argued that it could not be ascertained from the plaintiff whether the cause of action is premised on negligence or strict liability under Ryland v. Fletcher or upon trespass.

50 Counsel prayed that based on the submissions above the suit be dismissed with costs.

PLAINTIFF'S SUBMISSIONS IN REPLY:

Counsel for the Plaintiff Mr. Samuel Muhumuza submitted in reply to the preliminary objection and focused his arguments on the question of a cause of action and that the suit did not disclose a tort.

55 Counsel submitted that the law on cause of action was well settled citing the case of ***Auto Garage and Others v Motokov (No. 3) (1971) EA 519*** wherein it was stated by Spry VP that if a plaintiff shows that the plaintiff enjoyed a right which has been violated and that the defendant is liable then a cause of action has been established.

60 Counsel then pointed out that Paragraph 4 of the plaint discloses the facts leading to the suit and that the defendant did not deny responsibility for the wildlife involved.

Counsel further submitted that the defendant did not deny the facts under Paragraph 4 of the plaint and was hiding behind technicalities which
65 technicalities Counsel urged court to ignore in line with Article 126(2)(e) of the Constitution of Uganda.

As concerns the argument whether the suit discloses a tort or not, Counsel contended that it was a moot point as it was trite law that a tort was a civil wrong which in this case was already brought out in the plaintiff's pleadings to
70 the effect that a right had been violated. The plaint further showed that the plaintiff was seeking compensation in light of the violated right.

ANALYSIS:

The primary point of contention in this matter is simply whether or not a cause of action has been disclosed by the plaintiff and it is this issue that this court
75 will now proceed to address.

The legal basis for rejection of a plaint for non-disclosure of a cause of action is established under Order 7 Rule 11(a) of the Civil Procedure Rules and is mandatory.

In determining whether a cause of action is disclosed the Court of Appeal held
80 in the case of ***Kapeeka Coffee Works v NPART CACA No. 3 of 2000*** that the court must look only at the plaint and its annexes and nowhere else. CACA

In light of the above this court is enjoined from looking beyond the plaint and its annexes to ascertain the existence of a cause of action.

With regard to what establishes a cause of action the Court of Appeal held in
85 ***Uganda Aluminium Ltd v Restuta Twinomugisha CACA No. 22 of 2000*** that a cause of action means every fact which is material to be proved to enable the plaintiff succeed or every fact which if denied the plaintiff must prove in order to obtain judgment.

Considering the law and authorities above alongside the arguments of both
90 Counsels in this matter, it is the view of this court that based upon the plaint alone it is evident that a right is clearly established in as much as the plaintiff claims that his crops which have been formally valued at UGX 92,000,000

shillings were destroyed. It is also plainly evident in the plaint that the plaintiff attributes the damage to wildlife that he contends are under the custody and responsibility of the defendant. The plaintiff's contentions as laid out in the
95 plaint are clearly of the material kind envisaged by the Court of Appeal in the **Uganda Aluminium** decision above and if denied by the defendant automatically require the plaintiff to be put to strict proof in evidence.

Furthermore, the argument that there was no duty of care on the part of the
100 defendant evident in the plaint is not correct. It is evident on the face of the pleadings that the plaintiff attributed the damage to his crops to animals under the custody and responsibility of the defendant. One can therefore reasonably infer that the plaintiff's contention was that the defendant had a duty of care hinged on keeping the wildlife from damaging the plaintiff's crops.

105 This court therefore agrees with Counsel for the plaintiff that on the basis of the decision of the Court of Appeal cited above as well as the well established case of **Auto Garage v Motokov** as relied upon by Counsel for the plaintiff, the facts laid out in the plaint establish a right which has been allegedly violated by wildlife for which the defendant is said to be responsible.

110 At this juncture it is important to note that whereas Counsel for the Plaintiff contended that the proof of existence of a cause of action was on account of the defendant's denials of the same, by virtue of the decision of the Court of Appeal in the **Kapeeka Coffee Works** case above, the denials of the defendant cannot form the basis for proving existence of a cause of action. This court can
115 only address its mind to what is contained in the plaint and its annexes and nothing else.

The arguments on the part of Counsel for the defendant concerning whether or not a particular kind of tort is disclosed and that no tort is identifiable in the plaint are arguments of the nature that would tend to require the leading of
120 evidence in this matter. There may be some questions of law but they are of the nature that go beyond the pleadings and require leading of evidence. In the case of **Yudda Lutta Musoke v Greenland Bank (In Liquidation) HCCS 506 of 2001**, the court held *inter alia* that preliminary objections should only raise pure points of law which are argued on the face of the pleadings and that
125 where it is required to go beyond the pleadings and adduce evidence or where judicial discretion is sought, a point cannot be entertained as a preliminary issue but must await trial.

RESOLUTION:

130 In light of the analysis above, it is the finding of this court that the plaintiff has disclosed a sufficient cause of action to warrant the hearing of this suit.

ORDER:

The defendant's preliminary objection is hereby overruled with costs to the plaintiff.

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David S.L. Makumbi

AG. JUDGE

6th November 2023

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