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THE REPUBLIC OF UGANDA
IN THE HIGH COURT UGANDA AT KABALE
CIVIL SUIT NO. 0027 OF 2019

MBABAZI WILSON=====PLAINTIFF

VERSUS

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1. KABALE MUNICIPAL COUNCIL

2. UGANDA NATIONAL ROADS AUTHORITY=====PLAINTIFF

BEFORE HON. JUSTICE SAMUEL EMOKOR

RULING

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The Plaintiff brings the instant Suit under **Article 50 of the 1995 constitution** as amended against the Defendants jointly and severally seeking the following declarations and orders:

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a) A declaration that the construction by the 1st Defendant of permanent structures (lock-up shops) in the road reserve along the Kabale Police grounds in Kigongi Ward, Central Division within Kabale Municipality Kabale District is illegal, null and void.

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b) A declaration that the action by the 2nd Defendant of conniving with the 1st Defendant to construct permanent structures/lock-up shops with in the road reserve in the road reserve along the kabale Police grounds in Kigongi Ward, Central Division within Kabale Municipality, Kabale District, is indirect contravention of its statutory functions and therefore illegal.

c) A declaration order be issued against the Defendants in respect of the illegal permanent structures (lock-up shops) in the road reserve along the Kabale

5 Police grounds in Kigongi Ward, Central Division within Kabale Municipality, Kabale District.

d) A permanent injunction restraining the Defendants from tampering with the road, the road reserve along the Kabale Police grounds in Kigongi Ward, Central Division within Kabale Municipality Kabale District.

10 e) General and punitive damages.

f) Costs of the Suit.

The 1st and 2nd Defendants filed Written Statements of Defence in answer to the Plaintiffs claim.

The 1st Defendant at paragraph 5 of her Written Statement of Defence states and
15 I quote:

*“The 1st Defendant shall further contend that the Plaintiffs action has been filed prematurely, irregularly, against a wrong party, is frivolous, vexatious, an abuse of Court process and a gamble, without any valid basis or cause of action at law or at all and generally in breach of relevant laws and accordingly preliminary and
20 other objections shall be raised at the hearing with prayers that the Suit/Plaint be dismissed/struck off with costs”*

The 2nd Defendant at paragraph 4 of her Written Statement of Defence asserts and I quote:

*“The 2nd Defendant shall at the earliest opportunity raise a preliminary point of
25 law on the competence of this Suit on the grounds that it is misconceived, frivolous, vexatious, bad in law, an abuse of Court process and does not disclose a cause of*

5 *action against the 2nd Defendant and shall pray that the Suit be dismissed with costs”*

As expected when this matter came up for hearing Ms. Juliet Natukunda who appeared for the 2nd Defendant intimated to this Court that she had a preliminary point of law to rise upon which this Court provided a scheduled for filing of
10 Written Submissions. Both sides complied with the same.

A summary of the submissions

The main thrust of the 2nd Defendants submission is that the Plaintiff does not disclose a cause of action against the 2nd Defendant and as such ought to be struck out.

15 The 2nd defendant relies on the provisions of **order 6 Rule 30 (1) of the Civil Procedure Rules** that provides;

*“The Court may upon application, order any pleading to be struck out on the ground that it discloses no reasonable cause of action or answer and, in any such case, or in case of the Suit or defence being shown by the pleadings to be frivolous
20 or vexatious may order the Suit to be stayed or dismissed or Judgment to be entered accordingly, as may be just”*

The 2nd Defendant to buttress the above provision and for purposes of interpretation relied on the decision in **Major General David Tinyefuza Versus Attorney General SC Const.Appeal No. 0001 of 1997** in which the Court held
25 that;

5 *“A cause of action means every fact which if traversed, it would be necessary for
the Plaintiff to prove in order to support his right to a judgment of the Court. In
other words it is a bundle of facts which taken with the law applicable to them
gives the Plaintiff a right to relief against the Defendant... But it has no relation
whatsoever to the defence which may be set up by the Defendant nor does it depend
10 upon the character of the relief prayed for by the Plaintiff. It is a media upon which
the Plaintiff asks the Court to arrive at a conclusion in his favour. The cause of
action must be an antecedent to the institution of the Suit”*

It is the submission of Counsel for the 2nd Defendant that the Instant Suit is
brought under the provisions of **Article 50(1) and (2) of the Constitution** which
15 provides for enforcement of rights and freedoms. However it is Counsels
argument that the entire Plaint and specifically the facts constituting the Plaintiffs
cause of action under clause 5 of the Plaint does not cite or disclose any
infringement of any right or freedom guaranteed under the constitution as the
basis of filing the instant Suit.

20 It is Counsels contention that the closest the Plaint has alluded to the infringement
of rights and freedoms by the 2nd Defendant is under the particulars of malafides
and illegalities in paragraph 5 (f) however no fundamental or other right of
freedom of Ugandan citizens is cited there in as having been infringed by the 2nd
Defendant. Counsel in support of this submission relied on the decision in **Kimpi**
25 **Isabirye Versus Attorney General and Dr. Medard Bitekyekerezo HCMC**
No.23 of 2017 in which Court held that:

5 *“In order to proceed or bring actions under Article 50 of the constitution, the matter must relate directly to fundamental rights and freedoms guaranteed under the constitution”*

Counsel further relied on the decision **in Aboneka Michael and centre for constitutional governance versus Attorney General HCMC No. 367 of 2018 in**
10 **which Court held that:**

“It is not enough to assert the existence of a right. The facts set out in the pleading must bear out the existence of such a right and its breach would give rise to relief”

It is therefore the submission of the 2nd Defendant that the Plaintiff in the instant case is an abuse of public interest litigation as it does not disclose any violation of
15 constitutional rights. It is frivolous and vexatious as against the 2nd Defendant and ought to be struck out.

The Plaintiffs’ counsel in his Written Submissions in reply submits that the Plaintiff brought the Instant Suit against the 2nd Defendant for not carrying out her duty as the regulatory body to stop the illegal construction of permanent kiosk
20 structures in the road reserve and that the 2nd Defendant was aware given the correspondences that they issued to the 1st Defendant which was never complied with and no action was subsequently taken.

Counsel for the Plaintiff further submits that clearly under paragraphs 6(b), (c) and (d) the 2nd Defendant admits that it is her duty to regulate any activity under
25 taken along a national road or road reserve and subtly admits that apart from writing a letter to the 1st Defendant, she has not taken any further steps to address the anomaly upon which the cause of action in the instant suit is premised.

5 It is also counsels contention that the instant suit is brought under **Article 50 (1) and (2) of the Constitution** premised on the fact that the 2nd Defendant neglected and or refused to perform her regulatory duties thereby allowing infringement by the 1st Defendant on the public right to easements and use of roads when the 2nd Defendant in utter negligence and connivance with the 1st Defendant kept a
10 blind eye as the 1st Defendant occupied and erected permanent structures on a road reserve along old Kabale road in Kabale Municipality.

According to Counsel the glaring omission by the 2nd Defendant occasioned harm and injury to the citizens of Uganda and other road users who use the Kabale-Mbarara Highway who now have been condemned to utilize a narrow road which
15 may never be expanded due to the negligence of the 2nd Defendant who allowed a road reserve to be used as a site for permanent market kiosks. It is this inaction Counsel submits that has rendered the 2nd Defendant liable in as far as she has failed in her duty to the public where she is mandated to develop, maintain and manage the national road network in Uganda.

20 Counsel also associates himself with the decision in **Aboneka Michael and Centre for constitutional Governance versus Attorney General (supra)**

My decision.

Article 50 of the 1995 constitution (as amended) under which this Suit is brought provides under clause (1) and (2) that;

25 *“Any person who claims that a fundamental or other right or freedom guaranteed under this constitution has been infringed or threatened, is entitled to apply to a competent Court for redress which may include compensation.*

5 *Any person or organization may bring an action against the violation of another person's or groups human rights"*

Litigation under article 50 of the Constitution is now a legal path well-trodden and the Courts have laid down standards that must be met in regard to such proceedings. The decision cited in **Kimpi Isabirye Versus Attorney General and**
10 **Dr. Medard Bitekyerezo (Supra)** is one such standard set that in order to proceed or bring actions under **Article 50 of the constitution** the matter must relate directly to fundamental rights and freedoms guaranteed under the constitution.

The decision in **Aboneka Michael and Centre for constitutional governance**
15 **versus Attorney General (Supra)** reinforces the same position.

I have carefully perused the Complaint in this matter and found that the Plaintiff is not explicit on rights or freedoms which the Defendants have violated or threatened to violate. The Complaint does not cite or disclose any infringement of any right or freedom guaranteed under the Constitution as the basis of filing the same.

20 The Complaint under particulars of malafides and illegalities against the Defendants lays out a detail of what is stated to be connivance between the 1st and 2nd Defendant in the establishment of market relocation sites and construction of permanent lock-up shops along the Kabale police grounds in Kigongi Ward, Central Division within Kabale Municipality Kabale District and that the 2nd
25 defendant is in direct contravention of its statutory role and mandate of managing road infrastructure in Uganda.

5 The Plaintiff's Counsel in an attempt to introduce a right in his submissions refers to the infringement by the 1st Defendant as being one on the "Public right to easement and use of roads" This right is not explicitly born out of the pleadings of the Plaintiff and cannot be inferred.

I would therefore uphold the Preliminary Objections of the 2nd Defendant and on
10 this basis alone would dismiss the Instant Suit.

The above finding not with standing before I take leave of this matter I would like to make the following observation.

The 2nd Defendant in this Suit is established under **Section 5 of the Uganda National Roads Authority Act** with functions under Section 6 (i) and (ii) that
15 interalia include advising and assisting the Minister on the establishment and maintenance of roads reserves in accordance with the Roads Act.

The **Roads Act under Section 4(2) and (3) (a)** places responsibility for National Roads under the National Roads Authority (2nd Defendant).

The Roads Act under Section 64(1) (g) places a penal provision upon any person
20 who encroaches on a Public road by making or causing to be made on the Public road without proper authority any building, temporary kiosk, platform edge, ditch or fence or other obstruction. **Section 5 (2)** of the said Act places the cost of removing any such obstruction on the offender with the authority to remove or demolish such obstruction being given to the 2nd Defendant under **Section 5**
25 **(3).**

The Court in **Kawuki Mathias versus Commissioner General Uganda Revenue Authority HCMA No. 0014 of 2014** held that where a specific procedure is

5 provided for, parties should exhaust that process or other remedies before filing an action in Court.

1. The 2nd Defendant in this Suit is mandated under the fore listed laws with the responsibility of control of road reserves and walkways. The 2nd Defendant is also empowered to take action against persons who offend
10 these provisions of the law.

2. The Plaintiff under paragraph 5 (e) of his Complaint avers that he visited the offices of the Defendants to protest their actions but was completely ignored by the Defendants officials.

The Plaintiff however has not provided proof of these visits by giving dates
15 of the said visits nor has he demonstrated that he was serious about being heard by attaching any correspondences made to the Defendants in this regard.

Counsel for the Plaintiff in his written submissions attempts to bolster the Plaintiffs' case by making reference to the Defendants' written statement
20 of defence on the Court record but he is estopped from deploying this strategy by the decision in **Major General David Tinyefuza (Supra)**. The Plaintiffs cause of action therefore stands or falls squarely on his pleadings alone

It would appear that this suit is more of a fishing expedition. The Plaintiff
25 was simply too eager to institute the same and did not follow due process before filing this action.

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3. For the foregoing reasons the Instant Suit is hereby dismissed with each party bearing their own costs.

Before me,

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Samuel Emokor
Judge
28/02/2023

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