

07 R 11 (a/c) No cause  
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THE REPUBLIC OF UGANDA.  
IN THE HIGH COURT OF UGANDA.  
HOLDEN AT MBALE.

CIVIL SUIT NO. 4 OF 1992.

MOSES NAKUTUBU .....PLAINTIFF

VERSUS

MOHAMED SEKITOLEKO .....DEFENDANT

BEFORE: THE HON. MR. JUSTICE S.G. ENGWAU.

R U L I N G:

When the substantive suit came for hearing, the learned Counsel for the defendant raised a preliminary objection on point of law. He is objecting to the Plaint under O.7 r. 11 (a) and (c) C.P.R., in that it discloses no cause of action against the defendant and it is frivolous. 5

According to various prayers in the Plaint, the plaintiff seeks to have an alleged partnership between him and the defendant dissolved, to amount for contracts done and the amounts due from such contracts when amounted for be shared according to shares. 10

The Counsel submitted that before a claim of this nature can be entertained, the Plaint must prima facie disclose the existence of a partnership between the parties and the existence of contracts from which relief is sought. There should be material facts in the Plaint from which partnership may be inferred and material facts from which the contracts alleged to have been entered may be inferred. It is not enough for the plaintiff to allege there was partnership or that the partnership entered into contracts. 15

Partnership is alleged to have been opened under Inter Motor Spares. The plaintiff should have furnished court with the particulars of registration of the parties carrying out business in the name of Inter Motor Spares which is a requirement under section 5 (1) of the Business Name Registration Act, Cap. 87. Annexure "D1" discloses that Inter Motor Spares is the sole business of the defendant after one Wamala Rashid withdrew from the firm and the plaintiff has no other document. 20 25

In paragraph 3 of the Plaint, Inter Motor Spares commenced in November, 1990 but Annexure "D1" shows that the firm was registered on 26.9.90 under No. 85462 with the defendant and Wamala Rashid as partners. Therefore the Plaint raises false material to the claim and there is no an iota therein to show the existence of the plaintiff in the partnership to be dissolved. 5

Under paragraph 4, it is averred that there is a joint account, Annexure "A" relied on but Annexure "A" only reveals that both the plaintiff and the defendant opened a joint account but nothing to show that it was a business account. Rules for determining the existence of partnership are laid down in section 4 of the Partnership Act, Cap. 86. Therefore Annexure "A" cannot be relied on to determine the existence of a partnership. In fact there is no Partnership Deed exhibited in the Plaint. 10

As regards Annexures B1 - B5, these are cheques in the names of the defendant. The Plaint does not show what interest the plaintiff has in the property of the defendant. There is no locus in which the plaintiff can sue on the said cheques. Similarly, Annexures C1 - C4 are ledgers on the account of the defendant, but there is no indication on the Plaint on how personal ledgers of the defendant are linked to the plaintiff. 15 20

Annexures D1 - D6 are cheques in the names of the defendant and Inter Motor Spares strictly owned by the defendant. However, Annexure E is a ledger of joint account between the plaintiff and the defendant. It is claimed that cheques were deposited in this account and withdrawals are signed by both parties. There is no relevance of this annexure to the claim of the plaintiff. 25

The plaintiff seeks an account of contracts allegedly carried out but if the plaintiff was a partner with the defendant, it is contended that he should have known of the said contracts. However, nothing shows of the existence of partnership. 30

Annexures F1 - F2 World Food Programme made payment to the defendant and Annexure D2 shows the application to the World Food Programme by the defendant. The plaintiff was not a party and cannot sue on sums paid when he was not a party.

All in all, it is the argument that no interest of the plaintiff is disclosed on which action lies. No right of relief disclosed in the Plaint. Consequently, on the face of pleadings, this suit can be disposed of without the necessity to call witnesses. It is therefore submitted that court should hold that the suit is misconceived, frivolous and discloses no cause of action and should be struck out or be dismissed with costs to the defendant.

In his reply, the Counsel for the plaintiff submitted that the preliminary objection has no merit and should be dismissed with costs.

Under paragraph 3 of the Plaint, there is material to disclose the existence of a partnership and paragraph 4 discloses contracts obtained from World Food Programme to repair motor vehicles. Under paragraph 5 payment was made. These facts are contended to be within O.6 r.1 C.P.R., of what pleadings should contain.

As regards section 5 of the Business Names Registration Act, this does not apply as particulars are not required in the Plaint and it is further submitted that Annexure D1 should be an issue to be framed at the hearing of the case. Similarly, the existence of contracts is to be determined by court when evidence is given in court. Section 4 of the Partnership Act applies. It is therefore premature to raise it here now.

It is also the submission of the learned Counsel for the plaintiff that there is no requirement in law that Partnership Deed should be exhibited or be drawn by partners. B1 - B5 shows interest of the plaintiff as partner. Similarly D1 - D6. Ledgers C1 - C4 show how the defendant was manipulating the accounts and thereby depriving the plaintiff of his interest and paragraph 6 of the Plaint is to the point. Similarly with F1 - F2.

In conclusion, it is submitted that the application - D2, benefits the plaintiff as well. No need for both partners to sign the same. Therefore, the objection be overruled with costs to the plaintiff.

Having heard from both sides, the following points emerge for determination in this ruling:-

In the first instance, the Plaintiff must prima facie disclose the existence of a partnership between the parties and the existence of contracts from which relief is sought. There should be material facts in the Plaintiff from which partnership may be inferred and material facts from which the contracts alleged to have been entered may be inferred.

In the instant case, under paragraph 3 of the Plaintiff, there is material to disclose the existence of a partnership and paragraph 4 discloses contracts obtained from World Food Programme to repair motor vehicles. In paragraph 5, there is an averment that payment was made. Under O.6 r.1 C.P.R., every pleading shall contain, and contain only a statement in a concise form of the material facts on which the party pleading relies for claim or defence, as the case may be, not evidence by which they are to be proved. It is immaterial that Partnership Deed is not exhibited or is not drawn by the partners. If anything it is a triable issue at the hearing of the case whether or not there was a partnership.

It suffices also to mention at this stage that whether Inter Motor Spares was registered in November, 1990 or 26.9.90 with the defendant and another person as partners and/or exclusive of the plaintiff is yet another triable issue at the hearing of the case.

It follows also that the particulars of registration of the partners which are pre-requisite under section 5 (1) of the Business Name Registration Act, Cap. 87 are details in evidence at the trial of the substantive suit.

Secondly, all the annexures hereto referred in this ruling form framed issues for determination at the hearing of the case. They are spices which add flavour in this case to say the least.

In conclusion, it is too early at this stage for court to hold that the suit is misconceived, frivolous and discloses no cause of action and that it should be struck out or be dismissed. Accordingly, the preliminary objection is hereof disallowed with costs to the plaintiff in any event.



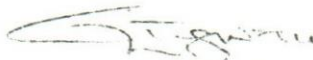
S.G. ENGWAU

JUDGE

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14/6/93.

24.6.93: Both parties present.  
Mr. Natsomi holding brief for Mr. Wandera for plaintiff present.  
Mr. Nangwala for defendant absent.  
Ruling read in open court.



S.G. ENGWAU

JUDGE

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24/6/93.