

**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT JINJA**

**CIVIL SUIT NO. 048 OF 2013**

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**1. M/S ALLIDINA TWEGAISE  
TRADERS ASSOCIATION**

**2. ISIKO BEN ::**  
**PLAINTIFFS**

10

**VERSUS**

**1. JINJA MUNICIPAL COUNCIL**

**2. BIRUS PROPERTY SERVICES LTD ::::::::::**  
**DEFENDANTS**

15

**BEFORE: THE HON. JUSTICE GODFREY NAMUNDI**

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**RULING**

The Plaintiffs sued the Defendants seeking reliefs which are contained in paragraph 3 of the Plaint and are laid out as follows:

- (a) A permanent Injunction restraining the Defendants from demolishing the building comprised in Plot 60-62 Allidina Road, Jinja.
- (b) An Order for cancellation of Title issued to the 2<sup>nd</sup> Defendant comprised in Plot 60-62 Allidina Road, Jinja.

(c) A Declaratory Order that the building on Plot 60-62 is not encroaching on the market land.

5 (d) General damages.

(e) Costs of the suit.

The two Defendants filed statements of defence and it is  
10 noteworthy that they both put the Plaintiffs on Notice that the  
Plaint is bad in Law and discloses no cause of action  
(Paragraph 8 of 1<sup>st</sup> Defendant's written statement of defence  
and paragraph 3 (a) and (b) of 2<sup>nd</sup> Defendant's written  
statement of defence).

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The brief background to this matter is that the suit building  
had 10 shops with tenants having individual Tenancy  
Agreements with their then Landlord.

20 The 1<sup>st</sup> Plaintiff is a Limited Company comprising the tenants,  
but the Company itself is not a tenant in the contested  
premises. The dispute is between the tenants who claim to be  
sitting tenants and the Defendants.

25 The two Plaintiffs have sued on behalf of the rest of the  
tenants.

When this matter came up on 10/6/2014, counsel for both parties agreed to file a joint Scheduling memorandum and also agreed to file written submissions in respect of preliminary points of law. They however only filed the submissions on  
5 preliminary points of Law.

Order 6 rule 28 of the Civil Procedure Rules regulates the handling and disposal of preliminary points of Law. A point of Law may be raised and disposed of at any time before the  
10 hearing. This is intended to bring to the attention of the Court an alleged irregularity which should be disposed of before the case is heard. Ref: **Bugiri Market Vendors and Development Association (BUMAUEDA) Vrs. Bugiri Town Council; Civil Suit No. 57/2001 (Jinja High Court).**  
15 Also **Nassan Wasswa & 9 Others Vrs. Uganda Rayon Textiles (1982) HCB 137.**

The second Defendant has raised a point that the Plaintiff discloses no cause of action against the Defendant and bases  
20 the above on the Following grounds:

1. That the Plaintiff's complaints are specifically against the first Defendant. Their issues with the 2<sup>nd</sup> Defendant are only contained in paragraph 4 (h) and (i) of the Plaintiff, that the property was transferred into the names of the  
25 2<sup>nd</sup> Defendants on 8/7/2011 where upon the 2<sup>nd</sup> Defendants attempted to evict the Plaintiffs from the

premises. The Plaintiffs also allege that the 2<sup>nd</sup> Defendants acquired the said Title through fraudulent means.

5

It is argued that the Plaintiffs are mere Licences/tenants on the property whose only obligation is to pay rent and have no proprietary interest in the suit premises.

10 The 2<sup>nd</sup> Defendant's predecessors in Title would accordingly be the Privatization Unit through the Attorney General and would accordingly be the right party to claim for cancellation of the Title.

15 In short, the Plaintiffs have no locus to seek the reliefs laid out in the Plaint. They have not been mandated or authorized by the former registered proprietor to claim against the 2<sup>nd</sup> Defendant. They have no actionable right to enforce in the circumstances.

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2. The particulars of fraud as laid out and pleaded are not within the Plaintiffs' power to plead. They are supposed to be brought by the aggrieved party.

25 3. The Annexures to the Plaint e.g. annexure 'A' and 'B' do not concern the 2<sup>nd</sup> Defendant at all.

It is also argued that the report of the Inspector General of Government is of no consequence to the Plaintiffs' case. The recommendations therein are not intended for the benefit of  
5 the Plaintiffs as tenants.

If the said recommendations are to be enforced, then it is the Registrar of Titles who is supposed to do so and cancellation of the 2<sup>nd</sup> Defendant's Title would only lead to the handing over  
10 of the suit property to the Privatization Unit.

The 2<sup>nd</sup> Defendant has cited the case of **N.A.S Airport Services Ltd. Vrs. A.G. (1959) EA 53**, where in it was held that the Courts are mandated to look at the Plaint and  
15 Annextures thereto to determine whether a cause of action is disclosed. Finally, it is argued that under Order 7 rule 11 CPR, a Plaint shall be rejected:

- (a) Where it does not disclose a cause of action.
- (b) Where the suit is shown to be frivolous and or  
20 vexations.

That on the authority of **Drummand Jackson Vrs. British Medical Association (1970) 1 WLR 688**, a cause of action is one which in light of the pleadings has some chances of  
25 success.

The last submission is that the reliefs sought do not lead to any direct or practical benefit by the Plaintiffs. In that aspect, the suit is frivolous and vexations. Ref: **Republic Vrs. Dunn (1965) EA 567.**

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For the Plaintiffs, it has been submitted that the Plaintiff Company as an interested party bided for the property based on interest of the individual members as sitting tenants.

10 They also lodged a complaint with the Inspectorate of Government which investigated and made a report in 2013 recommending that the Certificate of Title be withdrawn by the Registrar. That as a result the Commissioner for Land Registration has issued a Notice of intention to effect changes  
15 in the Register.

It is further submitted that the Plaintiffs' cause of action is their complaints against the Defendants. They only seek for:

20 (a) A permanent Injunction restraining the Defendants from evicting or demolishing the suit premises.

(b) An Order for cancellation of Title issued to the 2<sup>nd</sup> Defendant.

25 (c) A Declaratory Order that the building on Plot 60-62 does not encroach on the market land.

It is submitted that the Plaintiffs grievance arises out of their interest to acquire ownership of the property from government and anybody who claims to have become an owner can be  
5 sued for failure to follow the rightful procedures.

It is also submitted that the Plaintiffs also complain about the 2<sup>nd</sup> Defendant's demand for rent when the Plaintiffs are paying rent to the Privatization Unit hence they cannot pay rent to  
10 two different landlords.

I have looked at the pleadings, both the Plaint and its Annextures and the Defences by the Defendants.

15 Under **Order 7 r. 11 CPR**, the Court may reject a Plaint where it does not disclose a cause of action.

A cause of action is deemed to be established if 3 essential ingredients have been pleaded.

- 20 (a) That the Plaintiff enjoyed a right.  
(b) That such right was violated.  
(c) That it is the Defendant who has violated this right.

The theist of the Plaintiffs' case is that they are sitting tenants  
25 and therefore have right to enforce.

The 1<sup>st</sup> Plaintiff is a Limited Company and it is factual that it is not a tenant on the suit property neither does it have any proprietary rights over the suit property. The prayers in the  
5 Plaint are also not related to the claim of interest as sitting tenants.

The prayers as laid out can only be made by a party with a proprietary interest in the property. Even if the prayers were granted, they would be of no direct benefit to the Plaintiffs.  
10

It is my considered view that the Plaint does not satisfy the essential ingredients to establish a cause of action as against the 2<sup>nd</sup> Defendant.

15 It is true the tenants raised a complaint to the Inspectorate of Government which came up with a report and recommendations. The said recommendations are not supposed to be enforced by the Plaintiffs but rather by the Registrar for Land Registration.

20 Secondly, enforcing the said Orders would only have the effect of reverting the Title to the Privatization Unity, the 2<sup>nd</sup> Defendant's predecessor (on behalf of Government).

25 How the Plaintiffs would benefit from the said status is a different matter altogether.



Another scenario not mentioned by either party is that the  
Plaint also has a prayer for General damages. General  
damages are ordinarily granted when a right has been infringed  
5 and the aggrieved party is supposed to be recompensed or  
placed in the position obtaining before the infringement.

The Plaint as mentioned earlier does not lay down any right  
enjoyed by the Plaintiff or that the said right has been  
10 infringed.

On those grounds alone, the Plaint has to be rejected within  
the meaning of **Order 7 rule 11 CPR.**

15 The Plaintiffs are clearly not the right party to claim for the  
reliefs sought in the Plaint.

The first Defendant also had a preliminary point of law to be  
addressed in accordance with **Order 6 rule 28 CPR.**

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It is submitted that the 1<sup>st</sup> Plaintiff is a Limited Company, a  
body Corporate and is not a tenant in the suit premises. The  
tenants are individuals with Individual Agreements and that  
their interests are independent of the Company. It is  
25 submitted therefore that the Plaintiff Company cannot sue on

behalf of the tenants unless it has obtained a representative Order to do so in accordance with **Order 1 r.8 CPR.**

5 The Plaintiff therefore does not disclose a cause of action and offends **Order 7 rule 11 (a) CPR.** Reference was made to the case of **Auto Garage Vrs. Motokov (1971) EA 514,** wherein the principles to consider whether there is a cause of action are complied with.

10 In the instant case, it is argued that the interests of the Company are different from those of the individual members who have Individual Tenancy Agreements.

15 In reply, it is submitted that the Plaintiff has filed this matter based on the interest that they bided for the suit property and therefore has interest in the suit property.

20 What is clear is that the Plaintiff Company is not a sitting tenant on the property and hence has no locus to have bided for the property as a sitting tenant.

If it did so, it was on behalf of the tenants who are tenants in their individual capacities. There is no way the Plaintiff Company can go around the requirement to have obtained an  
25 Order for representative action under **Order 1 r.8 CPR.** The Plaintiff also has a prayer for General damages. It does not

disclose what right has been infringed to justify the claim. Are the General damages to be applied to the tenants and if so has the Plaintiff obtained the authority to sue on their behalf?

5 In the case of **Bugiri Market Vendors and Development Association Vrs. Bugiri Town Council**, Jinja High Court Case No. 57/2001, a Company purporting to represent the interests of individual market vendors purported to file a suit on behalf of the said vendors.

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It did so without obtaining an Order to do so under **Order 1 r. 8 CPR**. The Plaintiff was rightly struck out for disclosing no cause of action.

15 The instant case is no different from the suit cited above. The plaintiff ought to have obtained an order to file a representative suit.

I find that the preliminary points of law raised by both  
20 Defendant No. 1 and Defendant No. 2 are valid and I uphold them accordingly.

The Plaintiff is struck out for disclosing no cause of action against both Defendants.

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The Plaintiff neither had the capacity/locus nor the authority to file the suit.

They will meet the costs of these proceedings.

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**Godfrey Namundi**

**Judge**

10 **08/01/2015**