

**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA  
HOLDEN AT MBALE**

**HCT-04-CV-CA-0013/2015  
(ARISING FROM CONSOLIDATED MBALE CIVIL SUITS NO. 64, 65, 66  
AND 70 OF 2010)**

**PRAFUL CHANDRA R. PATEL.....APPELLANT  
VERSUS**

- 1. ABBAS MANAFWA**
- 2. WATIKA MOSES**
- 3. ROSE NAMWANO**
- 4. DAVID KASIGAIRE.....RESPONDENTS**

**BEFORE: THE HON. MR. JUSTICE HENRY I. KAWESA**

**JUDGMENT**

Appellant sued the Respondents as legal representative of **Vinodchand Ramji Shah** one of the registered proprietors of Plot 16 North Road Mbale. He alleged that the property had been expropriated and returned to original owners in 1993. Respondents were all found in occupation of this property as tenants of Custodian Board. They were all sued by the appellant for failing to pay rent or vacate the premises. Five suits were consolidated at the trial.

The trial Magistrate entered judgment for defendants hence the appeal.

The grounds of appeal were that:

1. The learned trial Magistrate erred in law and fact when she held that the plaintiffs did not disclose a cause of action against each of the Respondents.
2. The learned trial Magistrate erred in law and fact when she held that Plot 16 North Road was not repossessed.
3. Learned trial Magistrate erred to hold that Respondents were lawfully in occupation of the suit property.

4. The learned trial Magistrate erred in law and fact when she held that plaintiff had failed to prove his claim against defendants.
5. That the decision complained against had occasioned substantial miscarriage of justice.

Appellant argued grounds 1, 2, and 3 together and 4 and 5 separately.

I will follow the same order.

As a first appellate court I have a duty to re-evaluate the evidence and give it a fresh scrutiny so as to reach my own conclusions. I am also aware of the need to do so cautiously, and carefully since I had no chance to listen to and observe the witnesses, as guided in case such as PANDYA V. R (1957) E.A. 336.

With that caution in mind I resolve the grounds as here below:

**Grounds 1, 2, and 3: “Plaint did not disclose a cause of action as required by law.”**

From assembled evidence, the plaintiff was the only witness testifying as PW.1. He also relied on PI.A (Certificate of Title) PEA (Letters of Administration).

P “1B”- Certificate authorizing repossession.

P1 “C”- Notice letters.

PE “B”- Letters from Dagira & Company.

PE. “C”- Notice of intention to sue.

The defendants did not offer any defence.

The learned trial Magistrate in her Judgment found that at close of case for the plaintiff, PEX 'A' shows that plaintiff enjoyed a right, as a holder of Letters of Administration but that none of his rights were violated by defendants. She found that the plaint did not disclose a cause of action as required by law.

In his submission on appeal counsel for appellant argues that a cause of action was established vide the testimony of PW.1, evidence in P1A and P1B which were later admitted as exhibits. He referred to page 2, 4, and 10 of proceedings to argue that these documents were provided and admitted in evidence as exhibits which then put them under Section 6 and 7 of the Expropriated Properties Act as proof of repossession. He argued that there was proof of service of the Respondents of the Statutory notice vide Exh. P "B" (page 3 of proceedings). He argued that PW.1's evidence on this fact was not controverted by defence counsel and the evidence was allowed to stand.

Counsel argued that Respondents led no evidence to contradict PW.1's evidence of nonpayment of rent, or that they were permitted to occupy the premises and hence were trespassers. All the above in his view amounted to a cause of action.

On the other hand counsel for respondents argued that the findings of the learned trial Magistrate were proper. Relying on the case of Auto Garage & Others v. Motokov (No.3) 1971 EA. 514, he reiterated that the plaint did not disclose a cause of action. In his view a number of questions were left unanswered by close of the plaintiff's case showing lack of a cause of action. These included:

- Whether appellant was the legal representative of **Vinochand Ramji Shah**.
- Whether the letters of Administration were genuine.
- Whether the repossession was lawful.

Counsel pointed out that no originals of the documents relied on, nor certified copies of the same were presented to court; hence failure to show a cause of action.

I have gone through the pleadings and evidence on record. I have also carefully followed the submissions. The law as stated in the case of Auto Garage & Others v. Motokov (No.3) 1971 E.A 514, defines a cause of action as a cause where;

- a) The Plaintiff enjoyed a right
- b) That right has been violated.
- c) The defendant is liable.

The guidance that courts have laid down to explain those considerations have been set down on a number of other superior decisions.

1. 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. (Per Uganda Alumium Ltd v. Restuta Twinomugisha CACA 22/2000).

This means that for the plaintiff in this case, it was vital to have evidence of certificate of title, certificate authorizing repossession, letters of Administration, notification of repossession, notices/reminders/requests to pay rent, evidence of refusal to pay; Notice of intention to sue.

(These are pleaded in the plaint of Praful versus Manafwa: Paragraphs 4, 5, and 6).

The standard of proof is on he who alleges a fact to prove the same. (Sections 101,102, 103) of the Evidence Act.

I have noticed that the plaintiff did not attach the Letters of Administration, on the plaint as a basis of his authority. The annexed certificate of repossession is also not a certified copy. There was no certified copy of Anex 'A' (Title) accompanying the plaint. These documents were vital documents upon which plaintiff sought to establish his pleadings and evidence to establish a claim against defendants. A litigant who comes to court to establish a claim must be prudent enough to file properly authenticated documents. If they are copies or photocopies this fact must be authenticated by an approved "certified copy" which is properly signed and dated. It must be clean and readable so that it speaks for the original in terms of accuracy to avoid guess work. Annexure 'A' is ineligible and cannot pass for a copy of what it purports to be.

In the case of *Kapeka Coffee Works Ltd versus NPART CACA No. 3/2000*, the Court of Appeal held that in determining whether a plaint discloses a cause of action the court must look only at the plaint and its annexures if any and nowhere else."

Going by that guidance, if only the plaint is examined it falls short of the requirement to show a cause of action. The plaintiff sues on behalf of a deceased as Administrator but does not annex the required Letters of Administration. However the same were tendered in at the trial and admitted as PE 'A'. In their submissions defence Counsel however avers that the exhibit "PEA" was not an original or certified copy.

I do not see on the record whether what court received and admitted were original Letters of Administration but since the record indicates that Counsel never objected to them; (page 2 of proceedings) they would be assumed genuine. (A copy is not available on record). The sum total however of the evidential value of both pleadings and evidence led in court at close of plaintiff's case in my view did

not satisfy the required standard of proof to amount to a cause of action. The observations by the learned trial Magistrate on the quality of the pleadings suffices. If the rule set down in the *Kapeka Coffee Works Ltd versus NPART (CACA) 3/2000* case is strictly followed, the plaint and its annexures fell below the requirement to suffice a cause of action. The annexed photocopies were never certified. The copies are ineligible. There is no nexus between the plaintiff and defendants by a mere look at the plaint sufficient to require them answer any alleged violations as presented in the plaint.

At the trial PW.1 attempted to establish the nexus by presenting evidence through PE.1 and PE.2 but still left a number of unresolved questions. The alleged PE.3, referred to by counsel for appellant in his submissions on page 3 does not exist. The record has no such exhibit neither is it recorded.

I am unable to find that the plaintiff's plaint, or evidence in Chief discloses a cause of action. It falls far below the standard of proof in civil matters, and in such an important transaction. The documents presented were lacking in evidential value. The Magistrate was therefore right to find that the plaint did not disclose a cause of action. These grounds fail. (1, 2 and 3).

#### **Ground 4: Failure to prove the claim.**

This ground is premised on the findings under ground 1. I am unable to relay on PE.3, which appellant's counsel refers to as a basis of his assertions because the record of proceedings does not have reference to any PE.3. Am also not agreed to the fact that if defendants kept quiet then the burden to prove the allegations of non rent payment falls on them. The record shows that defence counsel applied to court to have **Counsel Dagira** become a witness to give evidence on matters that came to their attention as a basis of defence. When court declined to grant the order defence never called further evidence. It is therefore not true that defendants

declined to give evidence. The record shows a different trend that led to the closure of defence case. However that notwithstanding the evidence by plaintiff failed to satisfy the required standard of proof. He had no evidence to show that defendants violated his rights.

I find that the learned trial Magistrate made a right finding on this issue. This ground fails as well.

**Ground 5: Miscarriage of Justice.**

According to the case of Matayo Okumu versus Fransiko Amudhe & Others [1979] HCB 229, followed in Hadondi Daniel versus Yolamu Egondi CACA. 67/2003.

Miscarriage of justice occurs when on the face of the record the trial court decision cannot be supported by the evidence or where there has been misdirections by trial Court or unfairness by the same court.

The arguments raised by the appellants under ground 1 to ground 4 which would have laid the foundation for this ground had been rejected. There is nothing in the learned trial Magistrate's findings and decision that is a misdirection or unfair. This court confirms her findings and rejects this ground as not proved.

In the final analysis, this appeal fails on all grounds raised. It is dismissed with costs to the defendants.

**Henry I. Kawesa**

**JUDGE**

**03.03.2016**