

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL DIVISION

CIVIL SUIT NO. 299 OF 2014

KIYEMBA GRACE EMMY ::::::::::::::::::::::::::::::::::::::: PLAINTIFF

VERSUS

1. UGANDA WILD LIFE AUTHORITY

2. TOTAL (E&P) B.V (TEP UGANDA) ::::::::::::::::::::::::::::::: DEFENDANTS

BEFORE: HON. JUSTICE STEPHEN MUSOTA

RULING

This ruling arises out of Preliminary Points of law raised by learned counsel for the defendants in this suit which was brought under Article 50(1) of the Constitution of the Republic of Uganda 1995 and by plaintiff. The preliminary objection is to the effect that the plaintiff is incurably defective for bringing an action on behalf of 176 other farmers without first obtaining leave of court to do so and for the plaintiff not having any interest in the present case.

At the hearing of the suit, M/s Nicholas Ecimu and Patson Arinaitwe appeared for the 2nd defendant while M/s Chemonges Sabira and Ali Luzinda appeared for the 1st defendant. Mr. Joseph Manoba appeared for the plaintiff.

The brief background to this case is that the plaintiff filed this suit on 26th August 2014. In the plaintiff he sought under paragraph 4(a) & (b) declarations on behalf of 176 farmers from Purong sub-county and in paragraph 4(g) he seeks compensation for the same 176 farmers. On 24th September 2014, in its Written Statement of Defense the defendant in paragraph 3 objected to the

plaint and promised to raise a preliminary point of law which court is indeed dealing with today. The preliminary objections raised in this case as submitted by Mr. Arinaitwe are that paragraphs 4 and 12 of the plaint regarding the nature of the claim brought by the plaintiff and paragraph 13 on the remedies sought by the plaintiff indicates that the suit is incompetent and not properly before court. That the summary of evidence attached to the plaint indicates that there is a list of 176 farmers plus the plaintiff yet the plaint is indicated as being brought under Article 50. That this suit should have complied with O.1 r 8 of the Civil Procedure Rules because it is a claim on behalf and for the benefit of 176 people who are known and have been identified by the plaintiff. That O.1 r 8 of the Civil Procedure Rules is coached in mandatory terms making it not optional.

Learned counsel further argued that the plaint alleges a common right and interest cutting across 176 people who are seeking common remedies to wit compensation, general damages and other declarations. That where the plaintiff and 176 others are claiming common reliefs, the suit must comply with O.1 r 8 of the Civil Procedure Rules as was decided in the case of **Henry Kamoga & 5 Others Vs Bank of Uganda, HCCS No. 62 of 2009.**

The 2nd point of objection raised by Mr. Arinaitwe is that this suit is brought on behalf of a group of persons that are identifiable in a letter dated 16th March 2016. That the plaintiff does identify a list of the attached persons but this list was not attached to the plaint. That it was held in **Dr. James Rwanyarare & Another Vs Attorney General, Constitutional Petition No. 11 of 1997** that one cannot bring a suit on behalf of specific and identifiable persons under Article 50 of the Constitution without their knowledge. That one can only be excused from complying with O.1 r 8 of the Civil Procedure Rules if the matter is for the general public. Mr. Arinaitwe further submitted that the plaintiff has not demonstrated in his pleadings that he actually has an actual interest in this matter or that he has an independent cause of action. Therefore even if the plaintiff is left alone, the action would not be sustainable. Learned counsel prayed that the suit be dismissed with costs for failure to comply with mandatory rules of procedure and specifically O.1 r 8 of the Civil Procedure Rules.

Mr. Sabira learned counsel for the 1st respondent associated himself with the preliminary objections raised by learned counsel for the 2nd defendant. He emphasized that whereas the plaintiff purported to bring his claim under Article 50 of the Constitution, the claim is a matter that fully falls within the ambit of O.1 r 8 of the Civil Procedure Rules. That Article 8 applies where the matter in issue is for the general public unlike the instant issue.

In response, Mr. Manoba learned counsel for the plaintiff submitted that the plaintiff brought this suit under Article 50 of the Constitution as a matter of public interest for the benefit of specifically named individuals. That the plaintiff is therefore the proverbial keeper of his brother by initiating this action. That the provision of O.1 r 8 of the Civil Procedure Rules envision a situation where similar interests arise and one party seeks to present others in the action. That a person, organizations and groups of persons can be read into Article 50 Clause 2 of the Constitution to include public interest litigation. Further that the case of **Dr. Rwanyarare & Another Vs Attorney General** is distinguishable from that of **BAT (Uganda) Vs The Environment Action Network** because in Rwanyarare's case, there were similar interests because all the people were UPC members hence the decision of the court that the interests were the same. In BAT case, the court noted that the interests were different.

Learned counsel further submitted that the plaintiff does not describe himself as one of the 176 farmers but rather identifies himself as stated in paragraph 6 and 7 of the plaint that clearly the interests of the plaintiff and the 176 farmers are different and therefore the plaintiff is clothed with the powers or mandate set out in Article 50 to bring this suit against the defendant as properly set out in the authority of **BAT (U) Vs TEAN**. That the court overrules the objection for the interests of the plaintiff are different from those of the 176 farmers and therefore he can bring this action in public interest not just for the 176 farmers but for the fact that actions of the 2nd defendant are in a protected area of Murchison Falls National Park and are illegal.

Mr. Arinaitwe for the 2nd defendant submitted that paragraph 6 and 7 of the plaint have to be read together with reliefs sought which is ultimately why the plaintiff is in court. That the plaintiff's interests cannot be segregated from those of the 176 farmers. That in paragraph 13 of the plaint,

the plaintiff holds the defendants jointly and severally liable in general damages and other declarations so the plaintiff cannot separate his interests from 176 farmers. That under Article 50 and where O.1 r 8 of the Civil Procedure Rules is not necessary is where you are dealing with a person that cannot be ascertained and served which is not the case in this matter. That in the instant case, we have people who have been clearly identified and the plaintiff knows where they are and he has computed what they are seeking from court.

Mr. Arinaitwe further submitted that this is a case which seeks to provide private reliefs but can be filed as public interest matter. Secondly that the plaintiff has a choice to deal with his own interest independent of the 176 people but he has failed to express his own interest in this case. Further that the plaintiff would not sustain a cause of action alone in this matter and would have no *locus standi* whatsoever since he is not among the claimants. That the suit be dismissed for being incompetent and with costs.

The preliminary objections raise the following issues:

1. Whether the plaint in this case is fatally defective for being brought on behalf of 176 farmers without first obtaining leave of court.
2. Whether the plaintiff has no interest in this suit or *locus standi* to bring this suit.
3. Whether the suit should be struck out with costs.

I have considered the submissions by the respective counsel, the pleadings and the law applicable. I will go ahead and resolve the issues in the order I have set them out.

Issue I: Whether the plaint in this case is fatally defective for being brought on behalf of 176 farmers without first obtaining leave of court.

First of all, I must state that the provisions of O.1 r 8 of the Civil Procedure Rules are, where applicable, mandatory and if not complied with would render the suit incompetent and incapable of amendment. O.1 r 8 of the Civil Procedure Rules provides as follows:

“Where there are persons having the same interests in one suit, one or more of such persons may, with permission of court sue or be sued or may defend such a suit on behalf of or for the benefit of all persons so interested but the court shall in such a case give notice of the institution of the suit to all such persons either by personal service or, where from the number of persons or any other cause, such notice is not reasonably practicable by public advertisement, as the court in each case may direct”.

In all representative suits, where O.1 r 8 of the Civil Procedure Rules is applicable and makes it mandatory for the plaintiff to obtain leave of court before filing it and the suit is brought without leave, it will be incompetent and cannot even be stayed but should be struck out as was held in ***Henry Kamoga and 5 Others Vs Bank of Uganda, HCCS 62 of 2009,*** which followed with approval the holding in ***Kayima Vs Lugoora Par Pre Kichumbi Bavista Katwerana Society (1982) HCB 33.***

I entirely agree with the submissions by learned counsel for the 1st and 2nd defendants that the plaint before me is incurably defective for being brought in a representative capacity without leave of court or a representative order which violated the clear provisions of O.1 r 8 of the Civil Procedure Rules. I further agree with the decision of this court in ***Tarlogan Singh Vs Jaspal Phaguda & others (1997-2001) ULR 408,410*** where Ntabgoba PJ (as he then was) held that the taking of steps necessary to enable the plaintiff institute a suit in a representative capacity is taking the procedure under O.1 r 8 of the Civil Procedure Rules and O.7 r 4 of the Civil Procedure Rules which is rendered in mandatory terms. With respect therefore, the non-compliance with O.1 r 8 of the Civil Procedure Rules and O.7 r 4 of the Civil Procedure Rules cannot be said to be a matter of mis-joinder or none-joinder. It is a matter that must be complied with and failure to do so renders the suit incurably defective. The mandatory nature of this order is fortified in O.7 r 4 of the Procedure Rules.

In the instant suit, learned counsel for the plaintiff did not deny that the suit was brought for and on behalf of 176 farmers but instead submitted that O.1 r 8 of the Civil Procedure Rules is not applicable because this is a public interest litigation. I don't agree with this submission. Public interest litigation is litigation bonafidely instituted for the benefit of the public.

This suit is brought on behalf of persons who are known and identifiable and therefore cannot be represented except if leave of court is obtained to bring a suit on their behalf who may be aware of their rights but lack financial ability to enforce those rights or those who may not be aware at all about their infringed rights. See **Rev. Mtikila Vs Attorney General of Tanzania, HCCS No. 51 of 1993**

The circumstances of this suit shows that the suit is not bonafidely in the interest of the public since it is for the benefit of 176 farmers and on their behalf so the requirements of O.1 r 8 of the Civil Procedure Rules ought to have been complied with. The mere fact that it was stated on the face of the plaint that it is brought under Article 50 does not give an exemption from seeking the representative order. It is not a public interest litigation because one plaintiff is suing on behalf of 176 farmers from Purong Sub-county.

Consequently I will uphold this preliminary objection that the plaint in this case is fatally defective for being brought on behalf of 176 farmers without leave and a representative order of court.

Issue II: Whether the plaintiff has no interest in the suit or *locus standi* to bring the suit.

On this issues, learned counsel for the defendant submitted that the plaintiff has not demonstrated in his pleadings that he actually has an actual interest in the matter or that he has an independent cause of action. That if he remained alone in this suit, it will not be sustainable

because he brings it on behalf of 176 farmers. Learned counsel relied on the case of *Kasozi Joseph & 50,000 others Vs UMEME (U) Ltd HCCS No. 188 of 2010.*

In reply, learned counsel for the plaintiff submitted that this is a suit under Article 50 and therefore any person can bring such action. The plaintiff describes himself in paragraph 6 and 7 of the plaint as a Ugandan Citizen whose interests and rights in the ownership of wildlife and plants existing in its wild habitant in Uganda is vested in the government of Uganda through the 1st defendant board as a public trustee under the Uganda Wildlife Act. Further in paragraph 7, the plaintiff describes himself as a human rights advocate concerned *inter alia* with the rights of the citizens of Purong Sub-county Nwoya District. To exactly find out why the plaintiff is in court, para.6 and 7 of the plaint have to be read together with the reliefs sought to know exactly why the plaintiff is in court. For example in paragraph 13, the plaintiff holds the defendant jointly and severally liable in general damages and he prays for judgment to be entered against the defendants for several declarations for and on behalf of *inter alia* 176 farmers.

The wording of this claim clearly shows that this is not a suit envisaged under Article 50 of the Constitution. It is a representative action which required the plaintiff to have an interest in the case. The plaintiff in this case does not demonstrate any personal interest in the suit leaving him with no cause of action or *locus standi* to bring this suit without a representative order.

Issue III:

Having resolved issue I that the plaint is fatally defective for failure to obtain a representative order and having found that individually the plaintiff has no *locus standi* to bring this suit in the circumstances, I will order that the plaint be struck out with costs to the 1st and 2nd defendants.

Stephen Musota

J U D G E

30.08.2016