

IN THE HIGH COURT OF UGANDA AT KAMPALA

CIVIL DIVISION

CIVIL SUIT NO. 692 OF 2016

LEGAL BRAINS TRUST.....PLAINTIFF

V

BRIDGE INTERNATIONAL ACADEMIES LTD.....DEFENDANT

BEFORE HON. LADY JUSTICE H. WOLAYO

RULING

In his written statement of defence, the defendant raised preliminary objections to the suit that the plaint does not disclose a cause of action; that the plaintiff is a busy body with insufficient interest in the suit ; that the rights complained of or alleged to be violated are specific rights available to specific individuals and not to the general public.

In his written submissions, counsel for the defendant (Arcadia Advocates) argued that the suit is incompetent and cannot be sustained under article 50 of the Constitution. Counsel argued that to proceed under article 50 , the matter must relate directly to a fundamental human right in the Constitution yet the plaintiff's claim is hinged on alleged fraudulent and negligent misrepresentation by the defendant to the public that led to enrolment in the defendant's schools .

Furthermore, counsel argues that these are private rights based in contract and therefore cannot be enforced under article 50 and that moreover, the plaintiff has not availed names of the children affected.

He further submitted that the plaintiff does not have the locus to file the suit because it is in the business of commencing action in defense of human rights which is not envisaged by article 50 of the Constitution. He argued that the spirit of article 50 is enforcement of rights by volunteering individuals and not those who seek to use the same as a business.

In reply, counsel for the plaintiff argued that the current trend is for courts to give a liberal interpretation to locus standi. **He cited Human Rights Network for Journalists and LEGAL Brains Trust HCMC. 219 of 2013** in support.

In reply, counsel for the plaintiff Mr. Semakadde submitted that the plaint discloses a cause of action under article 50 in the modern sense as pronounced by the East African Court of Justice in **Prof. Anyang Nyong'o and others v Attorney General of Kenya EACJ ref. No. 1 of 2006**. Furthermore, that whether the rights complained of have indeed been infringed by the defendant's conduct is a question for determination by the court.

Counsel argued that it is premature for the court to determine at this stage that the plaintiff's case is a disguised case of fraudulent and negligent misrepresentation, breach of contractual relationship between parents/children and the defendant's academies.

Enforcement of rights under article 50 of the Constitution.

The case of Prof. Nyong'o cited by counsel for the plaintiff is authority for the proposition that a cause of action created by statute or other legislation does not fall under the parameters articulated in the famous case of **Auto garage V Motokov** but these parameters are defined by the statute or legislation.

Article 50(1) of the Constitution stipulates that

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 court of competent court for redress which may include compensation.'

Claim based on contravention of the law

The plaintiff in para. 3 states that

The claim is brought by the plaintiff in public interest for declaratory, injunctive, compensatory, punitive and other relief arising out of the defendant's breach of constitutional rights, statutory non-compliance, fraudulent and/or negligent misrepresentation and unjust enrichment, to wit,

- a) A declaration that the defendant violated children's and consumer rights protected by articles 21(1); 24, 30, 34 (4), 39 and 45 of the Constitution.

- b) An injunction restraining the defendant from continuing to operate pre-primary and primary education institutions in contravention of Uganda law.

The plaintiff then outlines particulars of breach in para 4 to include:

- a) Unsuspecting pupils and their benefactors were lured into the defendant's academies yet they did not comply with the prescribed basic requirements and minimum standards of pre-primary and primary education especially sanitation , classroom infrastructure, quality of teachers , relevancy of curriculum.
- b) Contraventions of the law by the defendant as cited by court in MC. 160 of 2016 Bridge International Academies ltd v Attorney General .

Counsel for the defendant objected to the claim that the defendant contravened the law on the grounds that contravention of the law leads to penal sanctions and it is not for the court to declare such contravention within the context of enforcement of human rights violations.

I agree with counsel for the defendant that where there has been contravention of law , the prescribed criminal law process kicks in. Moreover, the claim is framed in such a general manner that it is impossible to know what law was contravened. This notwithstanding, the fact that the plaintiff imputes criminal liability on the part of the defendant on account of some omissions and commissions means a civil suit under article 50 is not the correct forum to deal with the alleged contravention.

Therefore, para. 4(d) which is a claim based on contravention of the law is not sustainable under article 50 and it is struck out under order 6 rule 18 of the CPR that empowers the court ' to strike out a pleading ...which may prejudice, embarrass , or delay the fair trial of the action ...'

Para. 4(b) and others that give particulars to support the assertion that specified constitutional rights were violated are competent under article 50 of the Constitution.

Claim based on fraudulent or negligent act or misrepresentation

With respect to the claim based in fraudulent or negligent act or misrepresentation in para 3 (f) to 3 (i) , the particulars disclose that through deceptive advertisement and promotions, the defendant fraudulently and negligently misrepresented unsuspecting members of the public. That as a result, lured affected pupils and their respective benefactors into costly but

fruitless tuition contracts for pre-primary and primary education as well as other expenses thereby causing consumers to suffer damage for which the defendant is liable.

A fraudulent act or misrepresentation or negligent act giving rise to damages gives rise to a cause of action on an individual basis or a class basis. Therefore it is the affected persons to bring the action in contract or tort and not for enforcement of fundamental human rights under article 50.

Counsel for the plaintiff's argument that under section 33 of the Judicature Act, joinder of causes of action in order to curtail delays and prevent multiplicity of proceedings is flawed. Joinder is only possible if the different causes of action meet the requirement of article 50 of the Constitution.

These paras. will be struck out because the torts complained of cannot be addressed appropriately under article 50.

In summary, while I find that the plaintiff has locus standi to apply for redress under article 50 of the Constitution for violation of fundamental and other rights, it cannot sue for fraud or misrepresentation or negligence because it is neither a parent nor pupil of the defendant academies nor can it sue for contravention of unspecified laws.

For clarity, only those parts of the plaint that relate to breach of fundamental human rights and other rights will be prosecuted under article 50 of the Constitution.

The preliminary objection succeeds in part with half the taxed costs to the defendant in any event.

DATED AT KAMPALA THIS 23RD DAY OF JUNE 2017.

HON. LADY JUSTICE H. WOLAYO