

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

HCCS NO. 066 OF 2008

AKUZZE PETER SIMPLE & ORS.....PLAINTIFFS

VERSUS

- 1. THE UGANDA NATIONAL ROADS
AUTHORITY**
- 2. SONITRA JOINT VENTURE (RCC SOJU)..... DEFENDANTS**

RULING

BEFORE: HON. LADY JUSTICE EVA K. LUSWATA

A brief background

By their plaint, the plaintiffs claim special and general damages against the defendants for unauthorized entry into their land for excavation of rock leading to loss and damage. It is claimed that a company called Basil Read Boryques TP Joint Venture (BTJV) made the initial entry with full knowledge and authorization of the Road Agency Formation Unit (RAFU) of the Ministry of Works, Housing and Communication. That after BTJV left the land, the 2nd defendant took over the site and continued with similar and more unauthorized activities.

It is stated further that during March 2007, RAFU communicated to the plaintiffs' lawyers indicating their willingness to pay general damages of the excavated rock. The plaintiffs claim further that, the 1st defendant is the body that took over all the activities of RAFU and are thereby vicariously liable under the law to compensate the plaintiffs. Similarly that the 2nd defendant who took over from BTJV and continued with similar activities on the suit land, became strictly liable to compensate the plaintiffs.

When the suit came up for hearing, counsel for the 1st and 2nd defendants raised preliminary points of law that the plaint discloses no cause of action against the defendants. It was in addition raised in objection for the 2nd defendant that:-

- i. The plaintiff has no *locus standi* to bring this suit against the 2nd defendant
- ii. The suit against the 2nd defendant is *res judicata*

Parties were allowed to file written submissions which they did.

The Law

A cause of action was defined in the case of **Auto Garage & others Ltd vs. Motokov (No. 3) [1971] E.A 514**), where it was held that;

“For the plaint to disclose a cause of action, it must demonstrate that; the plaintiff enjoyed a right, the right was violated and it is the defendant who is liable.”

It is settled that all three elements above must be present for a cause of action to be maintained. See for example, **Tororo Cement Co. Ltd vs. Frokina International Ltd SCCA No. 02/2001**.

Further in **Jeraj Sharif vs. Chotai Fancy [1960] EA 374 at 375 Windham J.A**, held that;

“The question whether a plaint discloses a cause of action must be determined upon perusal of the plaint alone together with anything attached so as to form part of it and upon the assumption that any express or implied allegations of fact in it are true”.

Therefore it is settled that the cause of action must be plainly apparent on the face of the plaint and a plaint that does not disclose a cause of action, must be as a matter of course, rejected. **See: Attorney General vs. Major General David Tinyenfuza SC Constitutional Appeal No. 1 of 1997.**

For a better understanding of the context of what the Court should consider, the Court in the Tinyenfuza’s appeal emphasized that:

“A cause of action means every fact which if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of court. In other words, it is a bundle of facts which if taken with the law applicable to them, gives the plaintiff a right to relief against the defendant. It must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue. It is not limited to the actual infringement of the right sued on, but includes all the material facts on which it is found.”

The submissions

It was submitted that the Uganda National Roads Authority (UNRA) was established by the Uganda National Roads Authority Act 2006 (UNRA Act) and became operational on 1/7/2008. Thereafter, the Uganda National Roads Authority (Transfer of Assets and Liabilities) Regulations 2012 (The Regulations) were passed in order to transfer and vest particular assets and liabilities of the Government of Uganda (GOU) into UNRA. Counsel argued that the claim in the suit accrued in 2004 before the UNRA Act came into force and even then, UNRA is only subject to assets and liabilities specified in the schedules to the Act, which are restricted to equipment and office furniture, excluding land.

It was argued for the 2nd defendant that in the plaint, it is claimed that it is BTJV that entered into the suit land with full knowledge and authority of RAFU and carried out activities detrimental to the plaintiffs’ interests. It was therefore BTJV and not 2nd defendant who should have been sued. That BTJV did not commit the wrongs complained of because they were contracted way after the alleged destruction and excavations on the suit land had taken place. Counsel concluded that this would make the suit bad in law and liable to be dismissed under order 11 rule 7(a), (d) and (e) and order 6 rr. 29.

It was in the alternative argued for the 2nd defendant that the plaintiffs who were neither administrators nor executors of their late father (hereinafter the deceased) cannot maintain a claim for compensation relating to property that belonged to the deceased’s estate. They therefore had no *locus standi* to bring this action

In brief rejoinder to the above, plaintiff's counsel submitted that the plaintiffs own the suit land with the first three being registered proprietors thereof. That UNRA became liable to compensate the plaintiffs for the wrongs of RAFU by virtue of transferred responsibility, and that the 2nd defendant entered onto and excavated the suit land with full authority and consent of UNRA. That the issue whether UNRA indeed took over the liabilities of RAFU is a matter of evidence that cannot be determined at this preliminary stage. That in any case, the Regulations came into force on 16/3/2012, four years after the suit was filed which would cover the current claim

My decision.

The present suit was filed on 18/12/2008 with respect to a claim against actions of BTJV during 2004, which it is stated, acted on authority of RAFU. That the assets and liabilities of RAFU were by law taken over by the Act and Regulations thereunder. I understand RAFU to have been a department under the Ministry of Finance and thus, an entity of the Government of Uganda (GOU).

It is not in dispute that UNRA was established under the Act in 2006 and assumed certain liabilities of the GOU when the Regulations became enforceable on 16/03/2012. Section 39 of the Act provides that;

“The Minister may, by statutory instrument, make regulations for the transfer to the Authority of the ownership or possession of assets belonging to the Government which, by virtue of this Act in his or her opinion, are necessary for the performance of the functions of the Authority”.

On the other hand, under Regulations 2 (1) and (2) of the Regulations, all assets specified in the schedule thereto that hitherto belonged to the Government of Uganda were transferred to UNRA and thereby UNRA obtained all rights and liabilities attached to them. It is clearly stated in Regulation 3 that:-

“All assets and liabilities not listed in the schedule to those Regulations shall remain vested in the Government of Uganda.”

The Act has no retrospective provisions and thus alleged actions of trespass in 2004 are not covered by its provisions. It is stated in paragraph 4(b) of the plaint that BTJV left the suit land on an unspecified date when their contract was terminated by Government. With those facts, it cannot be stated that UNRA, a body corporate is liable for the loss, for by then, they were not yet legally in place.

Secondly, the argument by plaintiff's counsel of transferred liability can only be effected by law, in this case the Regulations. I have had an opportunity to peruse the Regulations which I find majorly refer to moveable property formerly under control of RAFU. No mention was made of matters to do with acquisition or compensation for land. I was faced with the same situation in a claim against UNRA with respect of liabilities incurred by RAFU during the construction of parts of the Northern By Pass in Bweyogerere. I found that UNRA could not be held accountable for any liabilities that befell before it came into force and for liabilities not listed in the Regulations. See **Nabuwati Namyalo & Anor Vrs UNRA & Anor HCCS NO. 66/2012**. I would hold the same view here, which is the same view espoused by Justice Bashaijja in **Abdul Nulu Nampagi Kasule Vrs UNRA HCCS No. 155/2016**.

I would accordingly agree with 1st defendant's counsel that the suit discloses no cause of action against UNRA, the 1st defendant.

The claim in paragraph 4 (c) of the plaint is that after the exit of BTJV, the 2nd defendant took over the activities on the suit land and continued using the stock piles left by BTJV, thus becoming strictly liable. It is not stated that the 2nd defendant was authorized or had any connection to RAFU. They are being sued in their capacity as a private company that entered onto the suit land and thereafter caused damage. It is not clear when and for how long the 2nd defendant remained on the land, so as to make UNRA their alleged principal liable. That would not even be relevant here as the objection appears to be that the claim, the subject of this suit, was in respect of excavations of rock allegedly carried out by BTJV before the 2nd defendant appeared on the suit land and thus, they cannot be held liable.

I note that in the plaint, it is stated that the 2nd defendant entered onto the suit land after BTJV. It is correct as stated by the 2nd defendant's counsel that in Annexure and C to the plaint, the local authority administration and local Parliamentarian cited BTJV as the company that had wrongfully entered onto and then blasted rock on the suit property and thus liable to compensate some of the plaintiffs through RAFU. However, it was clear in Annexure B (paragraph 2 page 3) that, the author was aware that the 2nd defendant was to begin work on the Bugiri High Way with effect from 1/7/2016. That fact was confirmed in paragraph 4(c) of the plaint when it was pleaded that the 2nd defendant took over work on the suit land and continued with the same activities as before.

I find that Annexure A to the plaint is not helpful to exonerate or point to the 2nd defendants' liability because it is a letter written by a different company, BCEOM Societe Francaise D'Ingenirie which in its body only mentions a joint survey they carried out with the 2nd defendant.

It may well be that BTJV left the suit land, but it is not denied that the 2nd defendant then took their place. It is enough for the plaint to show that the 2nd defendant too entered onto the suit land and carried out activities detrimental to the plaintiffs as owners of the suit land. If there is any connection to RAFU, then of course the suit would as in the case of BTJV, be bad for not disclosing a cause of action.

That is fact not clear in the pleadings and would require evidence, and thus cannot be the subject of a preliminary objection.

I would thus reject the objection that the suit does not disclose a cause of action against the 2nd defendant

With regard to the objection made in the alternative, the plaintiffs are in paragraphs 4, 5(a), and (e) presented as the owners of the suit land. That fact is confirmed in Annexure B and C to the plaint. It is not clear in their objection how the 2nd defendant came to the conclusion that the suit land belonged to an undisclosed deceased person, alleged to be the plaintiff's father or that the

plaintiffs hold no probate or letters of administration for that person's estate. This objection would thus have no merit and is dismissed.

No submissions were made for the 2nd defendant with regard to the objection that the suit is res judicata, which leads to the conclusion that it was abandoned. I would likewise make no finding on it.

In summary, the preliminary objection raised by the 1st defendant succeeds. The suit against UNRA is dismissed with costs to the 1st defendant. However, as a way forward, the plaintiff may consider joining the Attorney General to the suit as a defendant since RAFU (which has now been closed) was a department of the Ministry of Finance, and thus a government entity.

The two objections raised for the 2nd defendant fail, and the 2nd defendants shall meet all costs arising thereby.

The suit shall proceed against Reynolds Construction Company Sonintra Joint Venture (RCC SOJU).

I so order

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EVA K. LUSWATA

JUDGE

DATED: 23/04/2019