

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT MASINDI
CIVIL SUIT NO.0024 OF 2011

SUPPORT ASSOCIATION FOR CHILDREN WITH DISABILITIES ::::::::::::::: PLAINTIFF

VERSUS

1. OKELLO CHARLES
2. JAMARA OVONI
3. ARIKE JAKWONI CHANG
4. HARUNA KIDUMU

5. RENATO OYENYI ::::::::::::::: DEFENDANTS

BEFORE: HON.JUSTICE BYARUHANGA JESSE RUGYEMA

JUDGMENT

- [1] In this suit, the Plaintiff **SUPPORT ASSOCIATION FOR CHILDREN WITH DISABILITIES**, sued **OKELLO CHARLES & 4 ORS**, the defendants jointly and severally for trespass to land and sought orders, inter alia; a declaration that the suit land belongs to the plaintiff, that the defendants are trespassers, a demolition and eviction order against the defendants from the suit property.
- [2] The plaintiff contended that it is the lawful owner of 202 hectares of land situate at Walukuba, Butiaba, Biiso, Bulisa-Masindi District. That in 2001, the plaintiff occupied vacant land and started utilizing it without any interruption by way of planting Munyama and Musizi trees, rearing goats, among others.
- [3] The plaintiff further averred and contended that in 2003 it applied for a lease offer over the land and the same was granted. In 2010, the plaintiff applied to convert their land to free hold and the same was approved by Bulisa District Land Board.
- [4] It is the plaintiff's claim that in April 2011, the defendants blocked survey of the suit property and forcefully entered the plaintiff's land

by clearing several portions thereof planting cotton despite resistance from the plaintiff.

They have now heavily embarked on constructing temporary structures besides ferrying bricks on the plaintiff's land.

- [5] In their joint Written statement of defence (W.S.D), the defendants denied the plaintiff's allegations and contended that before the hearing of the suit, a preliminary objection shall be raised to the effect that the matter is a total abuse of court process and that the suit be dismissed with costs.
- [6] The defendants contended further that the suit land belongs to the local community of Walukuba L.CI who have for long occupied, utilized and owned the same without any disturbance until the year 2011 when the plaintiff illegally instituted a civil action against the defendants in the Grade II Magistrate's Court at Buliisa which civil claim was eventually dismissed.
- [7] Lastly, that the plaintiff did not go through the legally required procedure to obtain freehold offer but fraudulently procured their documents. They particularized fraud as, inter alia, that there was no one at Walukuba L.CI trading in the names of the plaintiff herein in the year 2001 until 2003 when the plaintiff brought goats to the village and not at the suit land. That the plaintiff concealed the fact that the suit land was being utilized communally and misrepresented the same among others while filling the Inspection report.
- [8] In the joint scheduling notes filed in court on 24/4/2019, the following issues were agreed upon for determination of this suit:
1. *Whether the plaintiff is the owner of the suit land.*
 2. *Whether the defendant has trespassed on the plaintiff's land.*
 3. *Remedies available to the parties.*
- [9] At the commencement of the hearing of the suit, counsel for the defendants never raised the preliminary objection which in the W.S.D

he intimated to raise. The preliminary objection was instead raised in the final submissions of the suit. The objection raised a preliminary point of law and it is now trite law that points of law, can be raised at any stage of the proceedings whether or not they were pleaded; **MATHIAS LWANGA KAGANDA Vs U.E.B H.C.CIVIL SUIT No.124 OF 2003. O.15 r.2 CPR** requires that once points of law are raised, court has to resolve them first in a ruling or judgment. From the foregoing, it is therefore incumbent that I first resolve the raised preliminary objection.

Preliminary point of law

[10] The defendants contend that the instant suit is a none starter having been filed by a none existent party (plaintiff) and this fatal error could not be cured by the late registration of the plaintiff association as a company limited by guarantee during the pendency of the suit.

[11] Counsel for the defendants **Mr. Kasangaki** submitted that the plaintiff was not incorporated or a body corporate which can sue or be sued in law. A Community Based Organization is not a body corporate under the laws of Uganda and could not commence a valid suit by filing the instant matter in this court. It was also his view that the anomaly in the institution of the suit is fatal and could not be cured by later registration of the plaintiff as a company during the pendency of this suit. He relied on the following authorities:

1. The Fort Hall Bakery Supply Co. Vs Fredrick Muigai Wangoe [1923] KB 682.

2. Bangué Internationale De Commerce De petrogad Vs Goukassow [1923] KB 682.

3. The Trustees of Rubaga Miracle Centre Vs Mulangira Ssimbwa H.C Misc. Application No. 576 of 2006 and

4. Uganda Freight Forwarders Association & Anor Vs Attorney General & Anor, Constitutional Petition No.22 of 2009.

[12] Counsel concluded that in the present case the plaintiff at the time of institution of the suit was unincorporated association, a fact conceded

by the plaintiff that at the time of institution of the suit on 19/10/2011 the plaintiff was not registered but it acquired registration later during the pendency of the suit on 30/1/2017. That therefore, the plaintiff had no legal existence. It had no capacity to sue. That later incorporation of the plaintiff would not cure this fatal anomaly and the incorporated entity could not be substituted as the plaintiff by way of amendment.

[13] In reply, counsel for the plaintiff **Ms. Zemei** submitted that under **Section 2(3) of the Non-Governmental Registration Amendment Act 2006,**

“upon registration of an organization under this Act, and the organization shall become a body corporate with perpetual succession and with power to sue and be sued in its corporate name.”

She submitted that although the plaintiff was registered in **2017 (P.Exh.1)** while the suit was filed in **2011** when it had not yet been incorporated, the plaintiff still had locus standi at the time to commence the instant suit. She relied on the authority of **Trustees of Uganda Discharged prisoners Aid Society Vs KCC & Anor H.C.C.S No.187 of 2009** for that proposition.

[14] Secondly, that the defendants were not in any way prejudiced by the late registration of the plaintiff; **A.N Phakey Vs Worldwide Agencies Ltd [1948] XV E.A.C.A 1.**

[15] She concluded her submission stating that the plaintiff was catering for members of a common interest i.e families with epileptic children; they all had a common grievance of low incomes and epilepsy, and the commencement of the suit before 2017 was to benefit the epileptic members of the association who were benefitting from the suit land. That the defendants were not prejudiced since they knew who was suing them.

[16] Whereas I share the above sentiments of counsel for the plaintiff, she appears to be conceding that by the time the plaintiff instituted the present suit against the defendants in **2011**, the plaintiff Association was not registered. It acquired registration later during the pendency of the suit as a company on 30/1/2017 (**P.Exh.2**).

[17] By its plaint, the plaintiff Association instituted the present suit describing itself as a legal entity/person duly registered as a Community Based Organization (C.B.O) with capacity to sue and be sued. However, the fact, is as conceded by counsel for the plaintiff, the plaintiff at the time of the institution of the suit in 2011, had not acquired any registration. In **Fort Hall Bakery Supply Co. Vs Fredrick Muigai Wangoe [1959] 474** it was held that an unregistered company cannot maintain an action in court because it did not have legal existence. It is trite law that where a suit is filed by a none existent party such an error could not be cured by an amendment under **O.1 r.10 CPR**; See **The trustees of Rubaga Miracle Centre Vs Mulangira Ssimbwa H.C.C Misc.Application No.576 of 2006**. In **Uganda Freight Forwarders Association & Anor Vs A.G & Anor Constitutional Petition No. 22/2009** Court observed:

“It is elementary principle of law that an unincorporated association is not a legal entity capable of suing or being sued. A suit by an unincorporated body is a nullity...”

[18] In the case of **Trustees of Uganda Discharged prisoners Aid Society Vs K.C.C & Anor H.C.C.S No.187 of 2009** cited for me by counsel for the plaintiff, it was held that,

“Members of unincorporated association should sue or be sued in their personal names unless it can be shown:
a) All members of the class had a common interest
b) They all had a common grievance
c) The relief claimed was in its nature beneficial to all of them which then representative action may be taken.”

[19] In the instant case, it therefore follows, members of the plaintiff association ought to have instituted the present suit either in their personal names or by representative action suit. The present suit is neither in the personal names of the members of the plaintiff association nor a representative action suit.

[20] Later registration by the plaintiff in **2017** during the pendency of the suit cannot correct or cure the anomaly which related back to the date of the plaint. The plaintiff having filed this suit when it was a none legal entity incapable of maintaining an action, this court has to strike out the action with costs since now the plaintiff is existent. It may consider filing a fresh suit but subject to the law of limitation. The preliminary objection disposes of this suit, it is dismissed accordingly.

Dated at Masindi this 10th day of August, 2021.

Byaruhanga Jesse Ruyema

JUDGE