



The parties made oral submissions which have been considered herein.

### **Submissions**

Regarding the failure to attach the Certificate of Incorporation by the Plaintiff, Counsel for the Plaintiff submitted that it would have held water if there was a search certificate from the Uganda Registration Services Bureau indicating that the Plaintiff is not a registered Company. He argued that it is not a legal requirement to attach the Certificate of Incorporation as long as the description of the parties is clearly stated and he also submitted that the Certificate of Incorporation can be produced as it is matter of evidence.

Counsel argued that under paragraph 2 of the Written Statement of Defence, the context of paragraph 1, 2 and 3 of the Plaint are admitted. Paragraph 1 describes the Plaintiff as a Limited liability company with capacity to sue and be sued and as such the Defendants are estopped from resigning from their own admission.

With regard to the absence of the Lease agreement as an attachment to the Plaint, the Plaintiff argued that under no circumstances did it plead that it has a registered lease. Counsel emphasized that the Plaintiff's contention is that the 1<sup>st</sup> Defendant fraudulently obtained the Certificate of Title to the suit land. Counsel submitted that in light of the foregoing submissions, the suit is not frivolous and vexatious and as such, the Plaintiff has a genuine concern.

In rejoinder, Counsel for the 1<sup>st</sup> Defendant argued that when a Company is suing, it must disclose its capacity because it is not a natural person. Therefore, its Certificate of Incorporation should be attached at the time of filing the suit. Counsel relied on the case of **Natural Resources Governance and Development & 2 Ors Vs Attorney General and Uganda National Road Authority (Constitutional Petition No. 40 of 2013)**

Counsel further submitted that the document the Plaintiff attached in form of a lease offer does not create any interest on the land. In any case, that lease offer is conditional and failure to satisfy the conditions therein renders it redundant.

### **Issue.**

1. Whether the Plaintiff has locus standi to bring this suit.

### **Analysis**

The issue stems from Counsel for the Defendant's preliminary objection that the Plaintiff did not attach a Certificate of Incorporation and a Lease Agreement thus has no locus standi.

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Indeed, on the Court record there is neither a Certificate of Incorporation nor a Lease Agreement attached to the Plaint. Counsel for the Defendant relied on the case of **Advocates for Natural Resources Governance and Development Vs Attorney General and Anor Constitutional Petition No. 40 of 2013** where Court found that the capacity of the First Petitioner to bring the Petition had not been proved due to the lack of attachment of the Non-Governmental Organisation Registration Certificate by the First Petitioner. As a consequence of the failure to attach this Certificate, Court struck out the First petitioner as a party to the Petition. I find this case distinguishable from the instant case. In **Advocates for Natural Resources Governance and Development Vs Attorney General and Anor Constitutional Petition No. 40 of 2013**, the matter was instituted by way of a Petition supported by affidavits which constitute the evidence. Literally speaking, there was no evidence of incorporation of the Non-Governmental Organisation in that case. However, in the instant case, the Plaintiff is still leading evidence and therefore the Certificate of Incorporation and the Lease Agreement can still be produced.

In **King's College Buddo Staff Savings Scheme Limited Vs Zaverion Samula Lukanga Bosco HCCS No. 26 of 2020**, where the Certificate of Incorporation was not attached to the Plaint, Court ordered the Plaintiff to produce the Certificate which was done.

It is trite law that a preliminary objection raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained by evidence. See **Mukisa Biscuit Manufacturing Co. Ltd Vs West End Distributors Ltd [1969] E. A** relied on in **James Katabazi & 21 Ors Vs Secretary General of the East African Community & Anor Ref. No. 1 of 2007**. As mentioned earlier, the Plaintiff is still leading his evidence and still stands a chance to present the Certificate of Incorporation and the Lease Agreement.

In the circumstances, I find that the preliminary objection is premature. The final decision regarding this objection awaits a full trial.

Costs in the cause.

I so order.



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**JUSTICE FARIDAH SHAMILAH BUKIRWA**

**07/12/2022**

**Delivered by email.**

