

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT JINJA
HCCS NO. 020 OF 2018

EAGLE INVESTMENTS LTD:..... PLAINTIFF
VERSUS

- 1. SURJIT BHARJ**
- 2. JINJA DISTRICT LAND BOARD :..... DEFENDANTS**

BEFORE JUSTICE FARIDAH SHAMILAH BUKIRWA
RULING ON THE PRELIMINARY OBJECTION

Brief facts.


The Plaintiff instituted this suit against the Defendants claiming that the Plaintiff is the rightful unregistered owner of the suit land which he started utilising in 1987 and to which the Plaintiff obtained a lease offer. The Plaintiff paid for the Certificate of Title for the suit land which the Plaintiff did not receive. The Plaintiff later found out that the Certificate of Title was fraudulently, illegally and irregularly issued to the 1st Defendant by the 2nd Defendant.

In 2018, the 1st Defendant forcefully entered upon the suit land and chased away the Plaintiff's workers and Airtel Uganda, a telecom company that the Plaintiff had, as the owner of the suit land, granted permission to set up a mast on thereon. In the interim, the 1st Defendant is erecting a perimeter wall on the suit land.

Representation

The Plaintiff was represented by Counsel Habakurama of M/S Habakurama and Company Advocates and the Defendant was represented by Counsel Godfrey Malinga & Juma Kinyiri of Malinga Kinyiri and Company Advocates

When the matter came up for hearing, Counsel for the 1st Defendant raised a preliminary objection that the Plaintiff does not have locus standi. The Defendant contended that the Plaintiff did not attach a Certificate of Incorporation to the Plaint to prove the capacity in which the suit is brought. The Defendant further argued that since no lease agreement was attached by to the Plaint and yet it a crucial document on which the Plaintiff is bringing this suit, then the suit qualifies as frivolous and vexatious. Counsel prayed for the suit to be dismissed under Order 7 Rule 11(a) and (e) of the Civil Procedure Rules.


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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 1st 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 1st 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.