

The Republic of Uganda

In The High Court of Uganda Holden at Soroti

High Court Civil No 005 of 2011

Dennis Ogwal Onyalla & 5 Others Plaintiffs

Versus

Ekanyu Gabriel & Another Defendants

Before: Hon. Justice Henry Peter Adonyo

Ruling on Preliminary Point of Law

1. Brief Facts:

The 2nd defendant was registered proprietor of the suit property vide LRV 3456 folio 7. In 2010, The 2nd defendant sold the suit property to the 1st defendant. The plaintiffs have now filed this suit alleging that the transaction between the 1st and 2nd defendants was void and seeking for several other declarations.

2. Legal issues:

- a) Whether the plaintiffs have locus to bring a cause of action against the defendants.
- b) Whether the plaint discloses a cause of action.

3. Resolution:

On 15th February ,2022 when this matter came up for for mention and directions, counsel for the defendants informed court that he had a



preliminary point of law to raise which according to him would dispose of completely this matter. Arising from that fact, court ordered parties to file their submissions in that respect. This ruling is based on the submissions which are on record.

This suit is brought under **Order 4 of The Civil Procedure Rules** that provides that every Suit to be commenced by plaintiff. The plaintiffs' claim against the defendants is for a declaration that the 1st defendant is a trespasser on the land situate at Plot 6 Jumabhai Road, Soroti and comprised in LRV 3456 Folio 3., a declaration that the sale of the suit land by the 2nd defendant to the 1st defendant is void *ab initio*, an order of eviction of the 1st defendant from the land a permanent injunction, general damages interest rate and costs.

The facts as stated by the plaintiffs are that they together with the 2nd defendant as well as their late mother jointly owned all of the land situate at Plot 6 Jumabhai Road, Soroti comprised in LRV 3456 Folio 3. That the plaintiffs late mother having been diagnosed with a terminal illness decided to have the 2nd defendant registered as the proprietor of the subject land with the 2nd defendant to hold the land on behalf of the rest of the family.

The 2nd defendant then went ahead and procured a lease from the Soroti District Land Board for an initial period of 5 years with terms that the lessee was barred from disposing of by way of sale, the subject land without the consent of the lessor within the lease time.

The plaintiffs claim is that sometime in 2009, in disregard of the covenants in the lease agreement with the district land Board, the 2nd defendant dishonestly sold the suit land to the 1st defendant.



The 2nd defendant avers that she does not recollect the fact that she had sold the property. That the time the sale agreement was allegedly executed, she was not in her proper state of mind as she was facing psychological challenges. There is no medical report to prove fact as **Section 101 of the Evidence Act** provides that the burden of proof is on the person who asserts a particular fact.

The 1st defendants through counsel, however, thus raised a preliminary objection that the plaintiffs' plaint does not disclose a cause of action and that, they have no locus to institute the suit against the 2nd defendant as they are not registered proprietors of the suit land.

In **Cooke vs Gull LR 8 E. P 116** and in **Read vs Brown 22 QBD P.31**, a cause of action was defined as every fact which is material to be proved to enable the plaintiff succeed or every fact which if denied, the plaintiff must prove in order to obtain judgment.

A cause of action is disclosed when it is shown that the plaintiff had a right, and that right was violated, resulting into damages and the defendant is liable.

In Uganda, three essential elements to support of a cause of action that is, that the plaintiff enjoyed a right, that right has been violated and the defendant is liable was laid down in the case of **Tororo Cement Co. Ltd vs Frocking International Ltd Civil Appeal No. 21 of 2001**.

Additionally, **Order 6 Rule 3 of The Civil Procedure Rules** provides that in cases where a party relies on fraud, particulars of the same shall be stated in the pleading. The same was also stated in the case of **Fredrick Zaabwe vs Orient Bank Ltd & 5 Ors civil Appeal No.4 of 2006**.

Order 7 Rule 11 (A) of The Civil Procedure Rules provides that a plaint may be rejected by court if it does not disclose a cause of action.

The perusal of the pleadings in the instant show that the plaintiffs in their plaint on the 3rd page, last paragraph, however, provide the following particulars;

- a. The 1st defendant intentionally entered into the plaintiff's land illegally possessing the same to the detriment of the plaintiff's relatives.
- b. That the 1st defendant entered onto the land and illegally facilitated the removal of the plaintiff's relatives thus interfering with the possession of the suit land by the plaintiff.
- c. That the 1st defendant illegally destroyed the structures erected on the suit property.

These facts by themselves are content alluding trespass to a piece of land of which the plaintiffs' claim interest thus enjoyed a right and that right has been violated by the defendants and so the plaintiffs are holding the defendants liable.

From these, it is trite to conclude that the plaint in the instant matter discloses relevant facts which show that the plaintiffs have a cause of action as against the defendants.

Arising from the same I am inclined to disagree with counsel for the defendants that the plaint does not disclose a cause of action for the plaint discloses the fact that the plaintiffs allege being beneficiaries to the suit land where they have a right, which right as been violated by the 1st defendant who trespassed on the suit land.

In line with **Article 26 of the Constitution of Uganda** which provides that every person has a right to own property either individually or in association with others, I would conclude that since the plaintiffs allude to the fact that they are legal beneficiary to the suit land, then it means that they have interests in the same and hence have locus in this instant suit. In the case of ***Omondi v. National Bank of Kenya Ltd and others, [2001] 1 EA 177*** locus standi was held to mean the right to appear in court to be heard in a specified proceeding.

Also in the case of ***Dima Dominic Poro Vs Inyani Godfrey And Anor***, it was held that it is trite that for any person to otherwise have *locus standi* where such person has “*sufficient interest*” in respect of the subject matter of a suit with sufficient interest being defined to mean one having an adequate interest and not merely a technical one in the subject matter of the suit and such interest must not be too far removed (or remote) but must be actual not abstract or academic in addition to being current and not hypothetical.

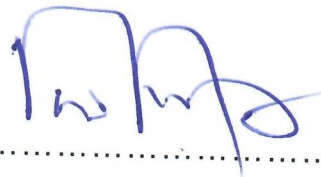
Relating the above to the instant matter, which I entirely agree with, from the pleadings, the plaintiffs aver that the 2nd defendant registered herself as a proprietor of the suit land yet she holds the land on behalf of her siblings who the plaintiffs. The 2nd defendant herself does not deny that fact in her written statement of defence. Arising from these therefore, I would conclude that the plaintiffs have beneficiary interests in the suit land and therefore have locus to bring the instant suit given such adequacy of interest.

This is because as a matter of legal principle, a beneficiary has a standing to sue in his or her own right where the beneficial interests sought to be protected are germane to the estate with the relief sought requiring individual participation of a beneficiary.

Arising from the facts above, I am satisfied that the plaintiffs have by their pleadings established sufficient interest as alluded to in their plaint rendering the preliminary point of law as regard the plaintiffs' *locus standi* to be moot.

Conclusively, therefore, the preliminary objection raised by the defendants is over ruled with this matter ordered to proceed to its logical conclusion.

I so order.

A handwritten signature in blue ink, appearing to be 'H. P. Adonyo', written over a dotted line.

Hon. Justice Dr Henry Peter Adonyo

Judge

28th February, 2022