

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT FORT PORTAL
HCT – 01 – CV – CA – NO. 0032 OF 2019
(ARISING FROM CIVIL SUIT NO. 030 OF 2017)

5 **BAGHAYIRWE YOSIA ::: APPELLANT**

VERSUS

KASITU SUB COUNTY LOCAL GOVERNMENT ::::::::::::::: RESPONDENT

JUDGMENT

BEFORE: HON. JUSTICE VINCENT WAGONA

10 **Introduction:**

The appellant being dissatisfied with the ruling of **His Worship Abubakar Latif Nakibenge, Magistrate Grade one at Bundibugyo delivered on the 29th day of October 2019** lodged an appeal in this court against the same asking court to have it set aside and framed the following grounds for determination by this court thus;

15 (1)The learned trial Magistrate erred in law and facts when he held that the plaintiff/Appellant herein had no cause of action against the defendant/Respondent.

(2)The learned trial Magistrate erred in law and facts when he held that the defendant/Respondent had no capacity to contract.

20 (3)The learned trial Magistrate erred in law and fact when he held that the contract for sale of land entered into between the appellant and the Respondent was void arb initio.

(4) The learned trial magistrate erred in law and facts when he dismissed the appellant's suit without declaring that the appellant is entitled to vacant possession of his land.

5 (5) The learned trial Magistrate erred in law when he based his ruling on facts which were not pleaded by the parties in their pleadings.

(6) The learned trial Magistrate erred in law and facts when he dismissed the appellant's suit with costs.

Background;

10 The plaintiff filed civil suit No. 030 of 2017 against Kasitu Sub County Local Council and Kasitu Sub County Local Government for breach of contract and an order for specific performance or in the alternative an order that they vacate his land, exemplary and general damages and costs of the suit.

15 It was contended by the appellant that he is the owner of land located at Bundimasoli trading centre having acquired the same through purchase from Nsiyabo Stephen on the 31st October 2015 and an agreement was made to that effect. That in April 2016, he was approached by the agents of the defendants led by the L.C.III Chairperson of the 2nd defendant who is the acting mayor of the 1st defendant with a proposal to purchase the plaintiff's land for purposes of constructing a pit latrine to be used by Bundimasoli market vendors and other persons.

20 That an agreement was reached between the plaintiff and the 1st defendant and a sale agreement was executed to that effect. That the plaintiff/appellant fulfilled his part of the agreement by handing over vacant possession of the suit land to the defendants who went ahead and constructed a pit latrine on the same and collecting fees therefrom. That the defendants failed to honor their obligation of paying the
25 appellant the agreed consideration of Ugx 3,000,000/= (Three Million Shillings) and

that he wrote several letters to the Town Clerk Ntandi Town Council and the Chief Administrative Officer of Bundibugyo District.

That the appellant held both defendants liable because the outgoing chairperson L.C.III made a handover report dated 15th July 2017 wherein the appellant's money was recognized as a debt to the defendants. The appellant thus sought to recover the said money, general damages and costs or in the alternative for an order that the defendants vacate the suit land and pay exemplary damages and costs.

The defendant filed a joint written statement of defense in which they indicated that a point of law was to be raised at hearing. They further contended that the purported sale agreement was illegal, null and void and therefore incapable of being enforced. That upon creation of Ntandi Town Council, all assets and liabilities in the territorial boundaries of Ntandi Town Council are a responsibility of the said town council and not the defendants. They thus asked court to dismiss the suit with costs.

At hearing, a point of law was raised by the defendants' counsel in which he contended that the alleged agreement for purchase of the suit land was illegal since the proper procurement process was not followed and that the defendants had no capacity to contract. He also argued that the case was filed against a wrong party since the land in issue was used by Ntandi Town Council and not the Respondent.

The trial magistrate upheld the point of law and held interalia thus;

“What is clear and undeniable is that no law or regulation was followed in the contractual process between Kasitu Sub County and the plaintiff. The KCCA VS. HajjatZahara case (supra) is distinguishable from the present case as for it the procurement law were not followed though the entity had capacity to contract. In the instant case it's clear that the contract was void abinitial. Kasitusub county had

no capacity to contract and it could not at all enter into any legal binding document to that effect.

Enforcing the agreement of the plaintiff as it is would be enforcing an illegality (See Makula International Ltd Vs. Cardinal Nsubuga & Anor 1982 HCB). Kasitu sub county and Ntandi Town Council under the Local Government Act are both corporate bodies within the meaning of the corporate law. When Ntandi was elevated from a sub county level to a town council level, its status was transformed from that of Kasitu Sub County. The newly created Kasitu sub county is a new body corporate without any liability of the former sub county which is now a town council.

The subject matter is located within Ntanditown council and when the plaintiff was suing he knew very well its Ntandi town council that is occupying the suit premises and Kasitu sub county is a new entity in different premises. Ntandi Town Council just changed a name and took over from former Kasitu town council with all its liabilities and that's the reason why its occupying the toilet that the plaintiff alleges was built on his land.

The new kasitu sub county is occupying new premises that are not on the plaintiff's land. It has not violated any of the plaintiff's rights to warrant a cause of action against it. (See Auto Garage Vs. Motokov No. 3 (1971) E.A 314).

It's a wrong party in this suit and the plaintiff should have been given adequate counsel to sue the entity that is occupying and using his premises. I find no cause of action against the defendant and accordingly dismiss the case against them with costs to the defendant."

The appellant thus asked this court to allow the appeal and set aside the ruling of His Worship Abubakar Latif Nakibenge thus the appeal at hand.

Representation and Hearing:

The appellant filed the appeal through M/s Ahabwe James & Co. Advocates. He did not file his written submissions as well as the Respondent. This court thus proceeded to determine the appeal on the basis of the memorandum of appeal filed and the
5 record of the lower court.

Duty of The First Appellate Court:

As a first appellate court, my duty under section 80 of the Civil Procedure Act is to subject the evidence of the lower court to a fresh and exhaustive scrutiny and draw fresh and independent inferences and conclusions. In doing so, I will apply the law
10 strictly and consider the evidence adduced in the lower court. I will bear in mind the fact that I didn't have the opportunity to see the witnesses testify and I will therefore make the necessary due allowance in that regard. (*See Panday Vs R (1967) E.A 336 and Narsensio Begumisa & 3 others Vs. Eric Kibebaga, SCCA NO. 17 of 2002.*)

Consideration of the appeal;

15 In my view after perusal of the memorandum of appeal and the record of the lower court, what appears to be at the heart of this appeal is whether the respondent under the law had capacity to contract and the propriety of the transaction of sale of the suit land between the appellant and Respondent and the person responsible to pay the appellant. I will thus start with the second ground that deals with the contractual
20 capacity of the Respondent.

The learned trial Magistrate erred in law and facts when he held that the defendant/Respondent had no capacity to contract.

It is not disputed that the Respondent is a local government within the meaning of a local government under the Local Governments Act Cap 243 as amended (herein

some time referred to as the Act). Section 1 of the Act defines a local government to mean the local councils established under section 3(2) to (5). It further defines a lower local government to include a municipality, town, division and sub county councils.

5 Section 3(1) provides that the system of local government shall be based on the district as a unit under which there shall be lower local governments and administrative units. Section 3(2) adds that a Local Governments in a district rural area shall be the district council and the sub county councils. It is not disputed that Kasitu is a local government under Bundibugyo District and thus falls under section
10 3(2) of the Act.

The next question is whether the Respondent had capacity to contract. Section 6 of the Act provides thus;

“Every local government council shall be a body corporate with perpetual succession and a common seal and may sue or be sued in its corporate name.”

15 Kasitu Sub County Local Government being a local government under the provisions of the Act, it’s governed by section 6 of the Act and thus it is a body corporate with capacity to sue or be sued in its name. The implication of an entity being a body corporate is that the law vests it with capacity to enter into any contract in its name and to be bound by such contract subject to its internal management
20 policies and other laws applicable. ***(See Lennard’s Carrying Co. Vs. Petroleum Co. Ltd (1950) AC 705 and Shaw & Sons Ltd Vs Shaw (1935) 2 KB 113).***

It is my view and finding that the Respondent being a body corporate by virtue of section 6 of the Local Government Act, it has capacity to the contract and can sue or be sued in its name. Therefore, the trial magistrate erred in finding that the

Respondent lacked the capacity to enter into the contract for sale of the suit land with the plaintiff. This ground therefore succeeds.

The next question is about the legality or validity of the agreement between the appellant and the Respondent. This is under ground 3 which is; *The learned trial*
5 *Magistrate erred in law and fact when he held that the contract for sale of land entered into between the appellant and the Respondent was void arb initio.*

The trial magistrate held that the contract between the appellant and the Respondent was void arbitio for want of capacity. Therefore, having resolved the first ground in the affirmative to the effect that the Respondent had capacity to contract, it then
10 naturally follows that the contract which appellant executed with the Respondent is valid on the basis.

The next limb of legality was in regards the procurement process. It was submitted by the Respondent's counsel in the lower court that the agreement at hand was arrived at contrary to the Public Procurement and Disposal of Public assets
15 procedures. He contended that under section 64 of the Local Government's Act, the Chief Administrative Officer is the accounting officer of the District and the custodian of all documents under section 64(2). That the impugned agreement was arrived at without the involvement of the Chief Administrative Officer and thus fell short of the requirements under section 26 of the PPDA Act.

20 I took the trouble to scrutinize the local governments Act. Section 1 and 3 of the Act is to the effect that the system of local government is based on District and sub county councils for local government under which Bundibugyo fell. The Act provides for the different accounting officers for the different administrative units. For District under section 64, the accounting officer is the Chief Administrative

officer and for lower local governments which include sub counties, the accounting officer is the sub county chief per section 69 of the Act which provides that;

“69 (1) there shall be a chief in each sub county and in each parish who shall be appointed by the District service commission

5 *69(2) the chief shall be the administrative head and accounting officer of the respective sub county or parish.”*

I have looked at the agreement of sale between the appellant and the Respondent dated 5th April 2016. The same was endorsed by the chairperson L.C.III, Mr. Kitabi Complex and Mr. Olega Ceasor Tevin who was the Senior Assistant Secretary who
10 was acting as the sub county chief. I am therefore satisfied that the accounting officer of the sub county was involved and thus the submission by the Respondent’s counsel that the accounting officer for the sub county is the Chief Administrative officer has no merit in light of section 69 of the Act.

In addition to the above, Justice Elizabeth Musoke (as she then was) in Kampala
15 **Capital City Authority Vs. HajjatZahara T/a Keep Warm Restaurant, HCCA No. 31 of 2014** observed thus;

*“the duty to with the provisions of the procurement laws is placed on the relevant authorities for instance the contracts committee and the Procuring and Disposing Unit. The Respondent did not have any powers to ensure that the law has been
20 complied with; that is a matter of indoor management. Failure to comply with the law cannot be visited on the Respondent but rather the respective officials of the appellant. It would therefore be unfair and unjust for the Respondent not to be remunerated when the alleged acts of noncompliance with the laws are attributable to the appellant’s officials.”*

I adopt the said position and observe the non-compliance if any with the required procurement procedures was not attributable to the appellant who was ignorant of the said requirements but the officials of the Respondent who had knowledge of the required procurement processes. The Respondent cannot in equity use the alleged noncompliance which in any case is her sole responsibility and not the duty of a third part to avoid a contract. In this case the appellant had land, he was approached by the officials of the Respondent to buy the same. He accepted and handed over the land to them and they assumed use of the same and constructed a toilet thereon on the understanding that they were to pay a sum of Ugx3,000,000/- (Three Million Shillings) as consideration. The Respondent cannot be permitted in equity to raise such an excuse to avoid an obligation in the contract under which she gained an advantage at the expense of the appellant. Therefore, the agreement between the appellant and the Respondent is valid and this ground therefore succeeds.

The next question is whether the appellant disclosed a cause of action against the Respondent. This is the first ground which was framed thus; **The learned trial Magistrate erred in law and facts when he held that the plaintiff/Appellant herein had no cause of action against the defendant/Respondent.**

A cause of action is 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 a judgment. (*See Cooke Vs. Gull LR E.P 116 and Read Vs. Brown 22 QBD 31*). It is said to be disclosed when it is shown that the plaintiff had a right, and the right was violated resulting into loss or damage and the defendant is responsible/liable. (**See Tororo Cement Vs. Frokina International Limited, SCCA No. 2 of 2001.**)

It is also trite that the question as to whether a plaint discloses a cause of action against a defendant or not is determined by making reference to the plaint and the

annexure thereto or anything that forms part of the same. (see **Kebirungi Vs. Road Trainers Ltd and 2 others, [2008] HCB 72**).

I have considered the plaint and the annexures thereto. The appellant's claim against the Respondent was for breach of contract, an order for specific performance and in the alternative that the Respondent vacates the land in the event he fails to compensate the appellant as per the transaction documents. It was contended by appellant that he is the owner of the suit land located at at Bundimasoli Trading Centre which he acquired by way of purchase on the 31st of October 2015 from Nsiyabo Stephen. That in April 2016, he was approached by the agents of the Respondent who included the LC.III chairperson and the acting Mayor for the 1st Respondent with a proposal to purchase the suit land for the construction of a pit latrine to be used by Bundimasoli market vendors and other persons. That he agreed to the proposal and an agreement was made to that effect dated 5th April 2016 which was attached as annexure A to the plaint. The agreement talks about the appellant selling his land to Kasitu sub county at an agreed consideration of Ugx 3,000,000 for construction of a toilet. The said agreement was endorsed and stamped by the chairperson L.C.III of Kasitu Sub county and Mr. Olega Ceasar Tevin the Acting senior assistant secretary and acting sub county chief and he indicated that the sub county was to pay by 5th April 2016 and signed.

The appellant filed the suit to enforce the said agreement. In my view the agreement that the appellant sought to execute is between her and the Respondent. The fact that a town council was created after and the land in issue falls under Ntandi Town Council did not invalidate the agreement he had with the Respondent. If the Respondent believed that payments were to be made by Ntandi Town Council since it's the one using the said land, she would have applied for issuance of a third party notice against Ntandi Town Council. The appellant dealt with the Respondent and

thus he could not sue Ntandi Town Council for recovery of the consideration yet Ntandi Town Council was not a party to the transaction leading to the sale and purchase of the suit land. The appellant alleges breach against the Respondent who she dealt with who failed to pay the agreed consideration; there is no way the
5 appellant would have filed a suit against a party he never dealt with.

Therefore, the suit was proper against the Respondent who even in the hand over report reflected the appellant's money as some of the pending debts due from the Sub county. This handover was not disputed by the Respondent and thus it was admitted as a true document made by her employees. It thus my finding that the
10 plaintiff disclosed a cause of action against the defendant. The plaintiff alleged that he enjoyed a right to his land and to receive payment as the agreed consideration, that right was violated by the Respondent who failed to honor her obligations under the agreement, the appellant suffered loss or damage and the defendant is liable since she is the one who committed to pay the appellant's money and not Ntandi Town
15 Council. This ground therefore succeeds.

I find no merit in grounds 4,5 and 6. They are a mere duplication of grounds 1 and 2. They accordingly fail and dismissed.

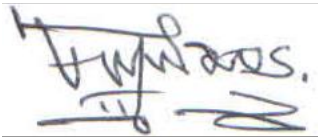
This appeal succeeds in totality with the following grounds;

**(a) That the dismissal order dated 29th October 2019 is hereby set aside and
20 Civil Suit No. 30 of 2017 shall be heard on merits.**

(b) Since the appellant failed to take active steps to have the case heard by filing the submissions and following up on the matter, I decline to award him costs. Therefore, each party shall bear own costs of this appeal and in the court below.

(c) The Assistant Registrar is hereby directed to immediately transfer the lower court file back to the Chief Magistrate Court of Bundibugyo for hearing before a different judicial officer under the said Magisterial area.

I so order.

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Vincent Wagona

Judge

06.03.2023.