

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
LAND DIVISION
CIVIL SUIT NO, 825 OF 2007**

FR. ANTHONY MATOVU..... PLAINTIFF

VERSUS

**1. DAUDI KAMYA
2. WILSON LUBWAMA
3. ERUNEVA NALUBEGA
4. C.W. MATOVU DEFENDANTS
5. JAMES NASIB KIGGUNDU
 (S/O YOKANA MUKASA)
6. MARY KATUSHABE KAZINI
7. JOHN MUKASA S/O ERINA NAKANWAGI**

RULING

BEFORE HONOURABLE LADY JUSTICE EVA K. LUSWATA

The plaintiff brought this suit against the defendants jointly and severally. The defendants in their joint written statement of defence stated that they would raise a preliminary objection to the effect that the claim does not disclose a cause of action against the respondents.

On the 17/4/14 counsel for the 6th defendant in relation to the preliminary objection submitted that the plaintiff/claimant does not have a cause of action against the 6th defendant. He submitted that the 6th defendant bought Kyaggwe Block 192 Plot 19 (hereinafter called the suit land) from Nelson Matovu who was the administrator of the estate of the late Eriasafu Matovu by a sale agreement of 13/2/1998 and procured registration on the title on 22/10/1998. That the title annexed to the plaint shows that the plaintiff is an administrator of the estate of the late Damalie Mbereganya and he obtained the Letters of Administration in 1998. That the late Mbereganya had transferred the title on 11/7/1970 to Eriasafu Matovu and this is evident on the title. It is only in 1988 that Eriasafu Matovu (the one who sold to the 6th defendant) obtained Letters of Administration. Therefore, the suit land does not form part of the estate of the late Damalie Mbereganya for she had long transferred it in 1970. The cause of action could have arisen only from the estate of the late Eriasafu Matovu. In his arguments he relied on **0.7 rule 11 CPR**

which provides that a plaint should be rejected where it does not disclose a cause of action and also the authority of **Auto Garage Vs Motokov 1971 (EA) 154**.

In reply, counsel for the plaintiff submitted that the 6th defendant bought the suit land from Nelson Matovu the then administrator of the estate of Eriasafu Matovu and the statement of claim alleges fraud in the whole transaction of dealing with the estate of the late Damalie Mberegenya. It is disputed that at the time the 6th defendant purchased from Nelson Matovu, he was an administrator of the estate of Eriasafu Matovu as alleged. According to Para 6(iii) of the Written Statement of Defence, Daudi Kamyia states that he sold 5 acres of land to the 6th respondent/defendant yet the 6th defendant claims to have purchased the suit land from Nelson Matovu. That all those mischiefs are fraudulently intended to confuse and deliberately fizzle out the activities that were cancelled out in disposing of the estate of the late Mbenegenya by the defendants. Counsel also argued in reply that, the late Mberegenya did not dispose of her land before her death. She died intestate in the 1960s. According to the title, the land changed from Mberegenya to Erias Matovu on 11/7/1970 just like that; subsequently it changed to Nelson Matovu on 11/6/1998, as administrator of Erias Matovu's estate. That the title *per se* depicts fraud. He then concluded that there is a cause of action against the 6th defendant.

In rejoinder counsel for the 6th defendant contended that according to the title, at the time the 6th defendant's purchased the suit land, it did not form part of the estate of the late Mberegenya and also that there had been two transfers from Eriasafu Matovu to Nelson Matovu the latter as administrator of Eriasafu Matovu. The plaintiff obtained Letters of administration in 1998 after all these transactions had taken place. He argued therefore that, they are unable to connect the 6th defendant to the transfer from Mberegenya to Eriasafu Matovu in 1970, for that is when the land ceased to be the property of Mberegenya. Also that this being registered land, it was enough to see on the face of it that fraud could be imputed upon the 6th defendant more so with respect to the 1970 transaction.

The question as to whether a plaint discloses a cause of action can be determined on consideration of the plaint and the attachments thereto. This was considered in the case of **Attorney General vs. Oluoch (1972) EA 392** where it was held that the question of whether a plaint discloses a cause of action is determined upon perusal of the plaint and attachments thereto with an assumption that the facts pleaded or implied therein are true. *Spry V.P* held in the now

celebrated authority of **Auto Garage Vs Motokov (supra)** that three essential elements must be proved to support a cause of action i.e.

- 1) The plaintiff enjoyed a right
- 2) The right has been violated
- 3) The defendant is liable.

In the same authority, the court held that a plaint may disclose a cause of action without containing all the facts constituting the cause of action provided that the violation by the defendant of a right of a plaintiff is shown. It was also the ratio in the same authority that a plaint that does not disclose a cause of action shall as a mandatory requirement be rejected.

This being an old case, the claim was instituted by a statement of claim in the Mukono Land Tribunal and subsequently the matter was referred to the High Court and the claimant/plaintiff argued to adopt it as his principle pleading in that respect.

According to paragraph 4 of the statement of claim, the plaintiff brought the action seeking the cancellation of the purported existing will claimed to have been written/made by the deceased and cancellation of the titles of the land comprised in Block 192 Plots 19, 20, 22 and/or others located at Ngadu Mukono District, general damages and mesne profits. That the said titles were issued to the 1st, 2nd and 6th defendants out of the forgery of the will by the 1st, 2nd, 3rd and 4th defendants.

The facts constituting the cause of action are that the late Damali Mberegenya (hereinafter referred to as he deceased) died intestate with no children or relative living around in her life time leaving behind an estate comprised of 30 acres of land and other households. That the plaintiff as the immediate relative, after realizing that the deceased left no will, successfully applied for and obtained letters of administration in 1998 vide Administration Cause No. 824/98. He later learnt to his surprise that the 1st, 2nd, 3rd and 4th defendants had forged a will and had gone ahead with the administration and distribution of the estate of the deceased. The plaintiff went ahead to plead and particularize the alleged fraud of the defendants and further pleaded in paragraph 6 of the statement of claim that the said transactions were fraudulent and unlawful and that the 6th defendant cannot be a bonafide purchaser for value without notice as she knew, participated in or ought to have known of the fraud.

Going by the facts as related in the plaint, Under Section 192 of the Succession Act, the plaintiff as administrator of the deceased's estate is in law charged with the mandate to manage all the estate property. Therefore, I agree that he enjoyed a right to that extent. However, before he could be stated to enjoy a right within the context of the facts of this case, he needed to show by his pleadings that the property in issue, at the material time, formed part of the deceased's estate and that the 6th defendant violated that right by dealing in the suit land fraudulently to his detriment and that of other beneficiaries of the estate, if any. As I have already stated, although the plaint need not state all facts in order to establish a cause of action against the defendant, under Order 6 Rule 1, they need to at least include the material facts which on the claim is based.

I noted that in the statement of claim, although the land for which a cancelation order is sought is mentioned in paragraph 4, it is not clear which particular plot was fraudulently obtained by the 6th defendant. Even the list of documents provided by the plaintiff did not give a clear explanation of the land as it collectively referred to the offending titles as '*respective land title copies of the respondents*' but none of those titles were attached to the claim. However, this anomaly may have been corrected by counsel for the 6th defendant who clarified at the close of his submissions that the particular land concerning his client was Kyaggwe Block 192 Plot 19. Since both parties are in agreement that this is the land in issue with respect to the 6th defendant, I took the step to peruse it carefully to confirm whether on the face of it, the entries therein would prima facie establish a cause of action against the 6th defendant.

Firstly, it is stated in the claim that the deceased died intestate on 28/8/61 and did not dispose of the suit land during her lifetime which would make the entry in favour of the late Eriasafu Matovu suspect. However, no death certificate is attached to the plaint to confirm that fact and without that vital evidence in the claim, it could be that the deceased did in fact dispose of the suit land to the late Eriasafu Matovu during her life time and Eriasafu Matovu procured registration later. It would then lend credence to the arguments by counsel for the 6th defendant that the deceased disposed of the suit land to Eriasafu Matovu during her life time which would mean that the suit land ceased to be the property of her estate over which the plaintiff would have the right and mandate of administration by virtue of the Letters of Administration he obtained in 2008.

Secondly, in paragraph 4(d) of the claim, the plaintiff claims that the 1st-4th defendants forged a will which they used to administer and distribute the deceased's estate. The alleged forged will was not attached to the plaint and it is not shown that the 6th defendant derived title from those particular defendants so as to put her in violation of the plaintiff's rights as the administrator of the deceased's estate. Thirdly, although the plaintiff has in paragraph 4 given particulars of fraud, none of those particulars refer directly to the 6th defendant and this offends the provisions of Order 6 Rule 3 CPR which provides that where a party relies on fraud, the particulars with dates shall be stated in the pleadings. That provision appears to be mandatory. Also see the authority of Kampala District Land Board & Anor Vs Venansio Babweyaka Vs Ors. SCCA. 2/07 reported in (2008) KLA 154. It is not enough for the plaintiff to simply claim in paragraph 6 of the plaint that the *'said transactions were fraudulent and unlawful and that the 6th defendant cannot be a bonafide purchaser for value without notice'* where that pleading omits to give the material particulars of her alleged fraud or reasonable notice of it.

The sum total of the above is that the plaintiff has not raised a cause of action against the 6th defendant and the suit against her is thus rejected under Order 6 Rule 30 and Order 7 Rule 11 CPR with costs to the 6th defendant. The claim will continue against the other defendants.

I so order.

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EVA LUSWATA K.

JUDGE

9/7/14