

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
LAND DIVISION
CIVIL SUIT NO. 994 OF 2009**

**1. HAJI HARUNA SEMAKULA
2. GENERAL INDUSTRIES (U) LTD..... PLAINTIFFS
VERSUS**

**1. DOTT SERVICES LTD
2. VENUGOPAL RAO..... DEFENDANTS**

RULING

BEFORE LADY JUSTICE EVA K. LUSWATA

When this suit came up for hearing on 20/3/2014 learned counsel for the defendant raised a preliminary objection to the effect that the plaint does not disclose a cause of action against the 2nd defendant. He argued that the facts in the plaint, do not disclose any liability against the 2nd defendant and the prayers do not require of him any action in case the plaintiff succeeds. That the only prayer concerning him is prayer (b) requesting him to receive the deposit paid to the plaintiff. He also submitted that from the attachments to the plaint and written statement of defence, no document is presented by the plaintiff to show that the 2nd defendant dealt with the plaintiff in his personal capacity and all averments in the plaint refer to him as the director of the 1st defendant. Therefore, whatever actions alleged, were on behalf of the 1st defendant. Counsel relied on the cases of **Auto Garage and Others Vs. Motokov (1971)1 EA 514 at 517** and **Lukyamuzi James Vs. Akright Projects & Anatoli Kamugisha HCCS No. 319 of 2002 pg 5 Para 3 & 4.**

In reply, counsel for the plaintiffs contended that the plaintiffs' claim against the defendants jointly and/ or severally is for an order that the plaintiff be allowed to refund the monies received from the defendants which refund can be made by either of them because negotiations were between the plaintiff and the 2nd defendant. That this is so, although the cash vouchers were made to appear as if the eventual beneficiary of the purchase of the suit land if concluded successfully, would be the 1st defendant. That going by the pleading, there is nothing to show that any sale agreement was eventually concluded with the 1st defendant only to the exclusion of

the 2nd defendant. It was therefore proper for the plaintiffs to bring this action against the defendants in line with the provisions of **Order 1 rule 7 CPR**.

Counsel for the plaintiff further submitted that in the case of **Lukyamuji James vs. Akright Projects & Anatoli Kamugisha (supra)** that was relied on by counsel for the defendants, the court had to try the suit on its merits before determining the issue as to whether the plaintiff had a cause of action against the 2nd defendant who was eventually struck off the plaint in the final judgment. There was an agreement of sale which had been executed and admitted in evidence which clearly related to the company and it had nothing to do with the 2nd defendant. That in the instant case, there is no agreement executed between the plaintiff and the 1st defendant and in any case, the 2nd defendant in his personal capacity is privy to the negotiations that took place.

Counsel for the defendant in rejoinder contended that **Order 1 rule 7 CPR** quoted by the plaintiff is irrelevant because it only applies where the plaintiff is in doubt as to the persons from whom he is entitled to obtain redress. In this case before court, it is clear that the 1st defendant is the party from which the plaintiffs can seek redress in the unlikely event that they win this suit.

In the case of **Attorney General Vs. Oluoch (1972) EA 392** 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. It is trite law that a plaint which does not disclose a cause of action ought to be struck out or rejected. **Spry J** in the case of **Auto Garage and Others Vs. Motokov (supra)** held that a cause of action arises where a plaintiff enjoyed a right, that the right has been violated and that the defendant is liable. The three are to be considered concurrently and if any of them is missing, the plaint would be struck out for not disclosing a cause of action.

In the instant case, the plaintiff brought the main suit jointly and or severally against the defendants for an order by the court that the negotiations in respect of the suit property between the plaintiffs and defendants be terminated and that the defendants receive back the deposit made to the plaintiffs. In paragraph 14 of the plaint, it was averred that the defendants in the course of the negotiations were making deposits to the plaintiffs in unreasonable installments. This was evidenced by Annexure "C" to the plaint which was a statement of various payments to the 1st plaintiff. However, nothing was pleaded in the plaint to show that the negotiations were between

the plaintiffs and the 2nd defendant or that the 2nd defendant dealt with the plaintiff in his personal capacity. In fact according to Annexure A to the WSD, all the acknowledgments made by the 1st plaintiff (one hundred in number) were stated to be from the 1st defendant only.

In paragraph 3 of the plaint, “the 1st defendant is described as, “a limited company incorporated and carrying out business in Uganda capable of suing and being sued on its behalf.....” This fact is admitted in paragraph 2 of the WSD and counterclaim. That being so, the 1st defendant is a body corporate and going by the principle laid down in the authority of **Salmon Vs Salmon (1897) AC 22**, the 1st defendant enjoys corporate personality. It is a legal person separate, and distinct from its directors, one of them being the 1st defendant. As such, the 2nd defendant is protected against claims against the 1st defendant even where he acted on their behalf. This is because, although the company is a legal person, it can only act through its directors, who are principally its directors. I therefore agree with counsel for the defendants that whatever actions alleged to have been done by the 2nd defendant were on behalf of the 1st defendant.

The present case can to some extent be distinguished from the facts in **Lukyamuji James Vs Akright Projects Ltd & Anor (supra)**. In the latter case, the Judge opted to reserve her decision (on whether the 2nd defendant as director could be sued on a contract), until after she had received all the evidence. She gave a reason for this when at page 4 of her judgment; she stated that there was no evidence at that stage to assist her in reaching a decision on that point. The circumstances of this case are different. Evidence was adduced to show that all payments for the alleged transactions were made to the 1st and not 2nd defendant. The fact that the 2nd defendant was involved in the negotiations is irrelevant, as I have already found that he was only acting as the 1st defendant’s agent. His participation in the negotiations cannot heighten, reduce or eliminate the 1st defendant’s liability, which the plaintiffs indeed, still have to prove.

In summary the plaintiffs have no cause of action against the 2nd defendant, and I therefore find merit in the objection. The suit against the 2nd defendant is accordingly dismissed with costs and he is discharged from and struck off the pleadings forthwith.

I so order.

EVA K. LUSWATA

JUDGE
10th October 2014