

**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT KAMPALA  
LAND DIVISION  
MISC. CAUSE NO. 622 OF 2013  
(ARISING FROM CIVIL SUIT NO. 244 OF 2013)**

**BUGANDA LAND BOARD..... APPLICANT**

**VERSUS**

**JOHN WAMPAMBA..... RESPONDENT**

**RULING**

**BEFORE HONOURABLE LADY JUSTICE EVA K. LUSWATA**

This application was brought by chamber summons under Order 7 rule 11 and 19 of the Civil Procedure Rules SI 71-1 and Section 98 CPA for orders that the plaintiff's plaint be rejected and struck out for suing a non-existent party and for being misconceived, incompetent, frivolous and vexatious, bad in law as it does not disclose a cause of action and costs of the application.

The application is supported by the affidavit of Bashir Kizito Juma the Head Land Management Department of the applicant in which he states *inter alia* that:-

1. The applicant herein was wrongly sued and or unnecessarily dragged to court in civil suit No. 244 of 2013.
2. The applicant is a non-existing person with no capacity to sue and or be sued.
3. The respondent's suit is barred by law, misconceived, incompetent, frivolous and vexatious, and an abuse of court process.
4. The respondent/plaintiff has no cause of action, or at all, against the applicant.

The respondent despite having been served with court process did not file an affidavit in reply and no reasons were advanced to explain either the respondent's or his counsels' absence. The applicant applied to have the application to proceed *ex parte* under **Order 9 rule 20(1) CPR** which was granted by this court.

Counsel for the applicant submitted that in paragraph 2 of the plaint, the applicant was referred to by the plaintiff/ respondent as a body corporate capable of being sued. With such averment in the plaint, the burden of proof shifted to the plaintiff to prove the proper capacity of the defendant to sue and to be sued. **Section 101 of the Evidence Act Cap 6** puts the burden of proof of a fact on the one who asserts that fact. That the plaintiff in this case has to discharge this burden to the required standard. It was also argued that the applicant in paragraph 2 of the Written Statement of Defence clearly averred that it filed the Written Statement of Defence in protest as it is not aware of its legal existence but nevertheless, it was served with court process. It was contended that, the applicant has no legal capacity to sue or be sued in its name and the respondent has failed to discharge this burden since he has not opposed the application by filing an affidavit in reply.

Counsel further submitted that a suit in a name of a non-existing plaintiff or defendant is bad in law and the same ought to be rejected by court. Counsel relied on the case of **Fort Hall Bakery Supply Co. Vs. Fredrick Muigai Wangoe [1959]1 EA 474**. That such a suit against a non-existent party cannot be amended to replace a party that has legal existence since there is no plaint at all. On this principle, counsel relied on the cases of **Trustees of Rubaga Miracle Centre Vs. Mulangira Simbwa HCMA No. 516 of 2005** and **Auto Garage vs. Motokov [1971] EA 514**. A suit against a non-existent party is misconceived, incompetent and frivolous and the same ought to be dismissed, see also **Justice Yorokamu Bamwine in Bagamugunda Vincent vs. UEB (in liquidation) HCCS No. 400 of 2007**.

It is trite that where facts are sworn in an affidavit and the other party does not file an affidavit in rebuttal, the facts therein are presumed to have been accepted by the other party. It was held in the case of **Samwiri Massa Vs. Rose Achen [1978] HCB 297** that where certain facts are sworn in an affidavit, the burden to deny them is on the other party and if he or she does not, they are presumed to have been accepted and the deponent need not raise them again. If they are disputed then he has to defend them. In the instant case, the applicant swore an affidavit stating that it is not a body corporate. However the respondent who was alleging so (by effect of his pleadings) did not present dispute that fact as sworn by the applicant.

I have read and agree fully with the authorities relied on by the applicant. A suit instituted for or against a non-existent person is bad in law. This is an error that goes to the root of the claim and substitution of such a party with a real or corporate person cannot be permitted in law.

No evidence was adduced to show that the Buganda Land board is a body corporate which was incumbent upon the respondent as the plaintiff. The result is that the respondent sued a non-existing person. The suit is thereby bad in law and an abuse of court process. The court has through its own independent investigations confirmed that the Buganda Land Board is a business arm of the Buganda Kingdom which was instated constituted to manage the kingdom land and buildings. Accordingly depending on where this land is situate, the right party to be sued should have been the Kabaka of Buganda. Indeed Article **246 (3) (a) of the Constitution** provides that:

*“The institution of a traditional leader or a cultural leader shall be a corporate sole with perpetual succession and with capacity to sue and be sued and to hold assets or properties in trust for itself and the people concerned.”*

Therefore the claim in Civil Suit No. 244 of 2013 against the Buganda Land Board is dismissed for being instituted against an entity or person having no legal existence or an entity not known in law. However, since I have found that the applicant is a non-existent person in law, they can neither receive nor pay costs. Therefore, this application succeeds without costs and likewise, the suit as against the Buganda Land Board, the 1<sup>st</sup> defendant, is dismissed with no order as to costs.

I so order.

**EVA K. LUSWATA**  
**JUDGE**  
**20/02/2014**