

**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT KAMPALA  
LAND DIVISION  
CIVIL SUIT NO. 136 OF 2012**

1. NUBUWATI NAMYALA  
2. MUSLIM SEKITOLEKO  
3. YUNUS SEGAWA KIWENDO ..... PLAINTIFFS  
(ADMINISTRATORS OF THE  
ESTATE OF THE ESTATE OF  
THE LATE HASSAN SSALI

**VERSUS**

1. UGANDA NATIONAL ROADS AUTHORITY  
2. ANTORNEY GENERAL..... DEFENDANTS

**RULING**

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

In this suit, the plaintiffs as administrators of the estate of the late Hassan Ssali seek for a declaratory order that they are the rightful owners of land comprised in Kyadondo Block 234 Plot 250 at Kirinya (hereinafter called the suit land), compensation as a result of trespass and in lieu of an illegal alienation of the suit land by the defendants, disturbance allowance, interest and costs. They sought in the alternative a permanent injunction restraining the defendants from further trespass on the suit land, interest, and costs of the suit. In their written statement of defence filed on 23/4/2012, the 1<sup>st</sup> defendant showed that they intended to raise a preliminary objection to the effect that the suit is premature and an abuse of court process. By leave of court, the submissions on the objections were presented in writing. The preliminary objection was raised under Order 7 rule 11(d), Order 6 rules 28, 29 and 30, Order 15 rule 2 and Section 98 of the Civil Procedure Act Cap 71. It was argued for the 1<sup>st</sup> defendant that that the plaintiff's suit does not disclose a cause of action and the same is an abuse of court process.

Counsel then presented a host of authorities which define a cause of action and

what is to be done where pleadings omit to establish one. Worthy of mention is the celebrated case of **Auto Garage and others Vs. Motokov (No.3) (1971) EA 514** where **Spry J** stated that in order to prove that there is a cause of action, it is necessary for the plaintiff to establish in the plaint three essential elements namely, that the plaintiff enjoyed a right, the right has been violated and the defendant is liable for the violation.

Counsel then argued that in paragraph 7 of the plaint, it was shown that the process of land acquisition in respect of the northern by pass was concluded by the Government of Uganda

(GOU) through the Road Agency Formation Unit (RAFU) and Ministry of Works and Transport before the establishment of the 1<sup>st</sup> defendant. That even after formation of the first defendant, they did not take up the liabilities in respect of the construction of the northern by pass which they argued remained vested in Government. The 1<sup>st</sup> defendant also raised issue of the fact that the plaintiff in the notice of intention to sue only mentioned the 2<sup>nd</sup> defendant. Upon those arguments, it was contended that the plaintiffs did not raise a cause of action against them and prayed for the suit against them to be dismissed with costs.

It was further argued for the 1<sup>st</sup> defendant that the annexure attached to the plaint indicate that prior to filing the suit, the plaintiffs had been communicating with RAFU and steps were being taken to verify their claim. They instead chose to erroneously bring this suit against the 1<sup>st</sup> defendant. This in their opinion is abuse of court process and they invited the court to exercise its inherent powers under section 98 of the CPA to dismiss the suit in order to prevent abuse of court process.

In reply, counsel for the plaintiffs submitted that suit land is the property of the plaintiffs. That their legal right to the suit land was violated when the GOU illegally alienated the suit land without compensation or before negotiations for compensation could be completed. He further argued that the alienation of the suit land was done by the GOU through RAFU a department in the Ministry of Works. It was further argued that in 2008, the Uganda National Roads Authority (UNRA) Act came into force effectively disbanding RAFU, and under **Section 6** of the said Act, the national road network including the northern by pass road became the responsibility of the 1<sup>st</sup> defendant. Thence, the plaintiff could only turn to the 1<sup>st</sup> defendant for remedy.

It was further argued for the plaintiff that under Cap 72 of the Civil Procedure and Limitation (Misc Provisions) Act (1<sup>st</sup> schedule thereof), the 1<sup>st</sup> defendant is not a scheduled corporation and would therefore not require service of a statutory notice. Counsel concluded that the plaint discloses a cause of action against the 1<sup>st</sup> defendant in as far as it is vested with a statutory duty to remedy the violations of the 2<sup>nd</sup> defendant in all issues concerning road network in Uganda.

It is trite law that a plaint which does not disclose a cause of action ought to be struck out or rejected. In the case of **Cotter vs. Attorney General of Kenya [1938] EACA 18** it was stated by **Sir Joseph Sheridan** that “*what is important in considering whether a cause of action is revealed by the pleadings is the question as to which right has been violated*” and to that I add, “*by whom?*”. The position was further expounded by **Spry. J** in the case of **Auto Garage and others vs. Motokov (supra)** that was cited by counsel for the 1<sup>st</sup> defendant where it was held that a cause of action arises where a plaintiff enjoyed a right, that right has been violated and that the defendant is liable. In my view, should one of those ingredients be missing, then the plaint should be struck out for not disclosing a cause of action. It is also important to note that the cause of action must be plainly apparent on the face of the plaint. **See: Attorney General vs. Major General David Tinyenfuza SC Constitutional Appeal No. 1 of 1997.** Therefore, my decision

will be based on the facts in the plaint and the attachments thereto to ascertain whether the plaint discloses a cause of action.

In paragraph 5a to 5c of the amended plaint, it was pleaded that on 25<sup>th</sup> October 1974, the late Hassan Ssali of Bweyogerere was under Instrument No. KLA 75485 registered as the registered proprietor of the suit land. In proof of ownership, a certificate of title was attached as annexure A. That upon his death, the plaintiffs applied and were granted letters of administration and they brought this suit in that capacity. Letters of administration were attached as annexure "B". That on 12<sup>th</sup> June 2006, when the plaintiffs learnt that their land was to be appropriated for construction of the road known as the northern by pass, the plaintiffs communicated a notice to the 1<sup>st</sup> defendant demanding compensation for the same. That in response, the defendant requested the plaintiffs to provide the certificate of title and thereafter requested them to be patient as their claim was being verified. However, no compensation was ever paid to them. From those facts and the documentary evidence provided, I am satisfied that the suit land is owned by the late Hassan Ssali and that the plaintiffs have the legal mandate to administer the affairs of his estate, including the suit land. They have established that they enjoyed a right that ought to be protected.

As to whether the above right was violated, the plaintiffs contended in paragraph 6 and 8 of the amended plaint, that the defendants appropriated the suit land without payment or any compensation and have now constructed a fly over and around about thereon. That due to the said actions the plaintiffs have suffered great loss of income in the excess of Shs. 50,000,000 and mental anguish. There was no defence that the plaintiffs ever acquiesced to the 1<sup>st</sup> defendant taking over the suit land, or that any compensation was ever paid to them. It is correct therefore that the plaintiff's right to own and enjoy the suit land has been violated and I hold so.

In my mind, the real dispute appears to be whether the 1<sup>st</sup> defendant was responsible or liable for the violation of the plaintiffs' right to the ownership and enjoyment of the suit land. According to counsel for the 1<sup>st</sup> defendant, in paragraph seven of the plaint, it was shown that the process of land acquisition in respect of the northern by pass was concluded by GOU through the Road Agency Formation Unit RAFU and Ministry of Works and Transport before the establishment of the 1<sup>st</sup> defendant. She further argued that the annexure to the plaint shows the project of the by-pass was undertaken by GOU before the 1<sup>st</sup> defendant came in existence and all matters concerning the project were concluded under RAFU. That although the 1<sup>st</sup> defendant did take over the liabilities of the GOU in that respect, it could only do so under the provisions of the Uganda National Roads Authority Act. Even then, the liability of the 1<sup>st</sup> defendant could only be operationalized under the Uganda National Roads Authority (Transfer of Assets and Liabilities) Regulations 2012 (hereinafter referred to as the Rules). She further argued that any assets that were not mentioned in the schedule to those regulations remained vested in Government. That since the acquisition of the northern by pass by the GOU was not mentioned in the regulations, it was therefore not taken over by the 1<sup>st</sup> defendant

Going by the address indicated on Annexure “F” and “G” to the plaint, the RAFU was a unit under the Ministry of Works and Transport and was therefore a department of the GOU. The Uganda National Roads Authority (UNRA) was a body established by the UNRA Act No 15 of 2006. The 1<sup>st</sup> defendant denies the fact that they are the successors in title of RAFU and that any assets and liabilities they took over from the GOU, were provided for in the rules. I do agree with counsel on this fact. There is no specific provision in the UNRA Act that made it the automatic successor of either RAFU or the GOU and there is no provision of that its provisions are retrospective. The legislator may have had that in mind when under Section 39 of the UNRA Act gave the Minister of Works powers to make regulations for the transfer to the UNRA of the ownership or possession of assets belonging to the GOU which by virtue of the Act and in his or her opinion are necessary for the performance of the functions of the UNRA. As a result of such powers, in 2012, the minister promulgated the Rules which provide in Regulation 2 (1) that:

*The assets and liabilities specified in the schedule to these regulations which, before the commencement of these regulations belonged to the Government of Uganda, and which by virtue of the National Roads Authority Act, 2006 and in the opinion of the Minister, are necessary for the performance of the functions of the Authority are transferred to the Uganda National Roads Authority.*

I have perused the relevant schedule and found that it was mainly comprised of moveable property. No mention was made of matters to do with acquisition or compensation for land over which the northern by pass was constructed. Therefore, under Rule 2(2) of the Rules, the 1<sup>st</sup> defendant could not have taken over liability in that respect. However, as rightly put by counsel, according to Rule 2(3) of the Rules, all liabilities attaching to the claim in this matter remain and are still vested in the GOU which is a party to this suit and ably represented by the 2<sup>nd</sup> defendant. It has therefore not been proved that the 1<sup>st</sup> defendant is liable for violating the plaintiff’s claim in this suit.

Accordingly, I find that the plaint in this case does not disclose a cause of action against the 1<sup>st</sup> defendant. However I hold that the plaintiff sued the wrong party after mistaken belief that they had taken over certain responsibilities of the GOU, this in my mind does not amount to abuse of court process and I so hold. Therefore, the preliminary objection only succeeds in part. The suit against the 1<sup>st</sup> defendant is dismissed and they are thereby discharged the proceedings and the suit shall henceforth proceed against the Attorney General as the representative of GOU only. The plaintiff’ shall pay one half of the costs attributable to the partial success of the preliminary objections.

I so order

.....  
**EVA K. LUSWATA**

**JUDGE**  
**14/4/14**