

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA SITTING AT ARUA
CIVIL APPEAL No. 0015 OF 2010

(Arising from Nebbi Grade One Magistrates Court Civil Suit No. 0002 of 2010)

1. **CHOMBE SIMEA** }
2. **OMIYA SIMEA** } **APPELLANTS**
3. **SEREFINA ANGEYANGO** }

VERSUS

1. **KAYA PARISH GRAZING AREA** }
2. **CHAIRMAN KAYA GRAZING** } **RESPONDENTS**
AREA (AWOSANI) }

Before: Hon Justice Stephen Mubiru.

JUDGMENT

The respondents sued the respondents jointly and severally for recovery of a vast tract of land situated at Kele village Awosani, Kaya Parish, Paidha sub-county in Zombo District. Their case was that the land in dispute was given to the Kaya Parish Community for grazing cattle. Sometime in January 2010, their Chairman received a correspondence from agents of the appellants, warning them to desist from any further activities on that land.

In their joint written statement of defence, the appellants refuted the respondents' claim and contended that the land in dispute originally belonged to a one Mzee Okema, father to the third appellant. Being a pastoralist, he had allowed many other pastoralists to bring their cattle onto the land and share his kraal. Upon his death, communal grazing on the land ceased and because of that, the respondents took advantage and encroached onto the land.

After hearing the parties and their witnesses, the trial magistrate visited the *locus in quo* and subsequently delivered judgment in favour of the respondents. He found that the land is owned by the respondents as a communal grazing area under customary tenure. The third appellant had violated the user of the land by allocating parts of it to the first and second appellants for

settlement and cultivation. He dismissed the third appellant's claim of having acquired the land through inheritance and issued a permanent injunction against the three appellants.

Being dissatisfied with the decision, they appealed to this court on three grounds. Having formed the view that this appeal can be disposed of by consideration of only one of the three grounds, I have not found it necessary to delve in the evidence adduced during the trial nor the merits of the rest of the grounds. I have narrowed down the scope of the appeal to the consideration of only that ground. The first ground of appeal reads as follows;

1. The learned trial magistrate erred in law and fact when he failed to appreciate that the plaintiffs, who are non-existent bodies, do not have the *locus standi* to sue and be sued, thereby occasioning a miscarriage of justice.

Arguing in support of this ground, counsel for the appellants Mr. Donge Opar submitted that none of the respondents is a registered and legal entity and therefore the trial magistrate should not have proceeded with hearing the suit. He cited *The Fort Hall Bakery Supply Co. v. Frederick Muigai Wangoe [1959] EA 474*. In response, counsel for the respondents Mr. Samuel Ondoma argued that the respondents had legal capacity by virtue of their registration as a Community Based Organisation with the Community Development Officer of the Department of Community Services at Paidha sub-county Local Government, who issued them with a Certificate of Registration as "Kaya Parish Community Grazing Land" on 21st January 2008.

The concept of *locus standi* concerns the right of a party to appear and be heard before a court. Where judicial redress is sought of a legal injury or legal wrong suffered by a person or class of persons, in order to invoke the jurisdiction of the Court, the person invoking must not only have an enforceable personal right or interest in the matter, but must also the capacity to initiate the action. At common law, a corporation sole, a corporation aggregate and an individual or individuals are the only entities with the capacity to sue or be sued, or those associations of individuals which are neither corporations nor partnerships, upon whom the Legislature has conferred such a status (see the pronouncement of Farwell J. in *The Taff Vale Railway Company v. The Amalgamated Society of Railway Servants [1901] A.C. 426, at p. 429*).

Groups of persons associated for the carrying out in common of any purpose or advantage of an industrial, commercial or professional nature; do not possess therein a collective civil personality recognised by law just by virtue of only the conduct of such activities in common. It is the act of incorporation that creates entities which are by law be regarded as distinct from their individual members, and as having the right to *ester en justice*, as a legal fiction (see *Salomon v. Salomon* [1897] A.C. 22 at p. 29). Henceforth, they may institute and actions may be instituted against them under the name by which they designate themselves.

In the instant case, registration as a Community Based Organisation with the Community Development Officer of the Department of Community Services did not purport to incorporate the group or persons therein described, nor did it purport to confer upon them a collective legal personality. It does exclusively what is therein inferred: permits for a period of two years, the persons collectively operating under the name by which they are commonly designated or known as “Kaya Parish Community Grazing Land”, to undertake their activities within Paidha sub-county, Zombo District. That registration did not create an entity which can own property or employ servants in that name and neither do they have officers or other agents with the capacity to act in their names and on their behalf in litigation, since a corporation can only act by its agents. Without incorporation, the name means nothing more than a mere collection of individuals and consequently its membership could not be sued in their collective name nor were they authorised to sue as a group in that name.

Although this issue was not raised during the trial, the Court should have *proprio motu* taken notice that an aggregate voluntary body, though having a name, could not appear in court as a corporation when, in reality, it was not incorporated. A body such as this is not, according to law, a judicial person in the pertinent sense. An unincorporated association is not a legal person. A large body of persons with a common grievance may instead approach the court by way of a representative suit initiated by a few of them under the provisions of Order 1 rule 8 of *The Civil Procedure Rules*, on their own behalf and on behalf of others having the same interest.

In *The Fort Hall Bakery Supply Co. v. Frederick Muigai Wangoe* [1959] EA 474, the plaintiffs brought an action for recovery of a certain sum of money from the defendant. During the hearing

evidence disclosed that the plaintiffs were an association consisting of forty-five persons trading in partnership for gain and that the firm was not registered under the Registration of Business Names Ordinance. Counsel for the defendant thereupon submitted that the action was not properly before the court and that the association was illegal as s. 338 of the Companies Ordinance prohibited an association or partnership consisting of more than twenty persons formed for the purpose of business (other than banking) that has for its object the acquisition of gain unless it is registered as a company under the Ordinance, and that the court had no power to grant relief under the proviso to s. 11 (1) of the Registration of Business Names Ordinance. It was held that; (i) the plaintiffs could not be recognised as having any legal existence, were incapable of maintaining the action and, therefore, the court would not allow the action to proceed.(ii) since a non-existent plaintiff can neither pay nor receive costs there could be no order as to costs. The suit was struck out with no order as to costs.

Similarly in the instant appeal, the respondents could not institute the present proceedings and become plaintiffs in the case merely by designating themselves in the plaint under the name which they adopted. In the premises, the trial court erred in trying the case instituted by a group of persons under an assumed name that had no separate legal existence. The entire proceedings therefore were a nullity from the very beginning. For that reason, this appeal succeeds on that ground and it is not necessary to consider the rest of the grounds.

The judgment and orders of the court below are hereby set aside. Since the respondent is non-existent as a legal person in law, there will not be any order as to costs.

Dated at Arua this 9th day of March 2017.

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Stephen Mubiru
Judge