

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(LAND DIVISION)

CIVIL SUIT NO. 375 OF 2016

SSANDE GODFREY:.....PLAINTIFF

VERSUS

- 1. KANYIJE JAMES**
- 2. JOSEPHAT NUWABEINE:.....DEFENDANTS**
- 3. THE COMMISSIONER FOR LAND REGISTRATION**

BEFORE: HON. MR. JUSTICE HENRY I. KAWESA

RULING

The Plaintiff brought this suit against the Defendant jointly and severally for orders contained in the plaint. In their Written Statement of Defence, the Defendants denied liability; and pleaded that they would raise a preliminary objection at the trial. During the trial, Counsel for the 1st and 2nd Defendants raised a preliminary objection and Court ordered parties to file written submissions addressing the same.

The preliminary objections raise are that;

1. The plaint contravenes Order 7 rule 1(b) and Rule 11 of the Civil Procedure Rules.
2. The Plaintiff has no cause of action against the Defendants;
3. The Plaintiff contravened Order 8 rule 18 of the Civil Procedure Rules, thereby admitted the 1st and 2nd Defendant's defence as a whole;
4. The Plaintiff never paid Court fees for filing documents;
5. The suit against the Defendants is *frivolous* and *vexatious*, and;
6. The Plaintiffs' case is an abuse of Court process.

Before arguing his grounds, Counsel for the 1st and 2nd Defendants reiterated the position as to what constitutes preliminary objection. Counsel, rightly quoted the case of *Mukisa Biscuits Manufacturing Co. Ltd. versus West End Distributors Ltd (1969) EA 696* to the effect that;-

“A preliminary objection consists of an error on the face of the pleadings which rise by clear implication out of the pleadings and which, if argued as a preliminary objection may dispose of the suit”.

This means that all the six objections above, raised by the 1st and 2nd Defendants must amount to points of law which, if successfully established, will dispose of the Plaintiffs’ suit.

I will handle the preliminary objection 2, 5 and 6 because of their interrelation and 1, 3 and 4 separately.

Preliminary objection 1

Counsel for the 1st and 2nd Defendants submitted that paragraph 1 of the plaint does not give the description and place of residence of the Plaintiff. According to him, this is a fatal omission. Counsel concluded that the plaint should be rejected on that ground. He relied on Order 7 Rule 1(b) and Rule 11 of the Civil Procedure Rules. On the other hand, Counsel for the Plaintiff did not reply to this submission.

I wish to reproduce the 1st paragraph of the plaint which states that;

“The Plaintiff is a male adult of sound mind and an administrator of the estate of the late Peteralina Mweyanwa whose address of service for the purpose of this suit is c/o Lumweno & Co. Advocates, 4th Floor, King Fahd Plaza, Plot 52, Kampala Road, and P. O. Box 2938”.

O.7 R1(b) of the Civil Procedure Rules said to have been contravened by paragraph 1 of the plaint reads;

1. *The particulars to be contained in the plaint.*

The plaint shall contain the following particulars;-

(a)

(b) The name, description and place of residence of the Plaintiff, and an address for service:

Accordingly, Counsels' prayer was that the plaint be rejected and the suit dismissed under O.7 R.11 of the Civil Procedure Rules which reads:-

11. *Rejection of the plaint*

The plaint shall be rejected in the following cases;

- (a) Where it does not disclose a cause of action;*
- (b) Where the relief claimed is undervalued and the Plaintiff, on being required by Court to correct the valuation within a time to be fixed by Court, fails to do so;*
- (c) Where the relief claimed is properly valued but an insufficient fee has been paid and the Plaintiff, on being required by Court to pay the requisite fee within a time to be fixed by Court, fails to do so;*
- (d) Where the suit appears from the statement in the plaint to be barred by law;*
- (e) Where the suit is shown by the plaint to be frivolous and vexatious.*

According to the 1st paragraph of the plaint, the name description and address of service of the Plaintiff are explicitly stated. What is missing in the paragraph is the description of the place of residence of the Plaintiff. Can this amount to a point of law which, if argued successfully, disposes of the Plaintiffs' suit?

In answering this objection, I refer to O.7 R11 of the Civil Procedure Rules, providing for instances where a plaint should be rejected. None description of the Plaintiffs' place of residence is not one of these grounds. In any case, I believe that if prejudiced, the 1st and 2nd Defendants should have sought for further and better particulars of the description an place of residence of the Plaintiff under O6. R4 of the Civil Procedure Rules. Ultimately, I am of the opinion that this ground should fail.

Preliminary objection 2, 5 and 6

Counsel for the 1st and 2nd Defendants submitted that the plaint does not disclose a cause of action against them. While relying on the case of *Kapeka Coffee Works Ltd versus NPART CACA NO.3 of 2000*, Counsel submitted that when determining whether a plaint discloses a cause of action, Court must only look at the plaint and its annexures. To this end, he argued that although the Plaintiff has Letters of Administration, the same do not confer ownership of the suit land upon him.

Counsel questioned whether the Plaintiff is still an administrator in law. While relying on **Section 278 of the Succession Act, Cap 162**, Counsel argued that it is now about 3 ½ years, and Plaintiff claims to be an administrator of the deceased's estate, yet the law required him to have filed final accounts of the estate within one year from the date of the grant. That even if the Plaintiff is still the administrator, he was not entitled to be granted the said Letters of Administration given that under **Section 202 of the Succession Act, Cap 162**, Letters of Administration can only be granted to persons with the greatest proportion in the intestate's estate. That the Plaintiff being a grandson was not entitled to the greatest proportion in the said deceased's estate, given the existence of other beneficiaries, although unnamed in the plaint. Counsel prayed that this Court finds the grant *null and void* and recommend criminal prosecution against the Plaintiff. He also submitted that there is no evidence that the deceased was the owner of the suit land. Further that there is no proof in the Plaintiffs' pleadings that the said Peteralina Mweyanwa died.

Lastly, Counsel added that the 1st and 2nd Defendants could not have defrauded the Plaintiff, given that they were registered on the suit land on the 17th day of April 2008, long before the Plaintiff obtained the grant in 2014.

Ultimately, he prayed that the Plaintiffs' suit be dismissed under O7 R11(a) of the Civil Procedure Rules for being *frivolous* and *vexatious* and, for being an abuse of Court process.

Counsel for the Plaintiff on the other hand maintained that the plaint discloses a cause of action because it shows that the Plaintiff had a right which right was violated by the Defendants. He relied on the case of *Auto Garage & Anor versus Motokov (No.3) [1971] EA 514*.

Before resolving whether the plaint discloses a cause of action, I will first establish whether the Plaintiff is within the law, an administrator of the estate of the deceased and if so, whether he is empowered to sue for acts committed against the said estate preceding the grant of Letters of Administration.

According to **Section 78 (1) of the Evidence Act Cap 6**, all public documents are presumed to be genuine if executed in a form and manner provided by law. It has been rightly held before in the case of ***Khalid Walusimbi versus Jamil Kaaya & AG [1993] 1 KALR 20*** that *production of Letters of Administration, being a public document, is proof that the holder is an administrator of the deceased's estate unless the authenticity of the document is challenged*. The Plaintiff attached a copy of Letters of Administration to the plaint. According to the above authorities, I find that he is a lawful administrator of the deceased's estate unless the authenticity of the said Letters of Administration is challenged.

The mere holding of Letters of Administration also to me, is on the face of the evidence of the death of the deceased. I do not therefore agree with Counsel for the 1st and 2nd Defendants that there is no proof that the deceased is indeed dead.

Under **Section 25 and 180 of the Succession Act Cap 162**, the said Letters of Administration vested the estate of the deceased in the Plaintiff to hold the same in trust for the beneficiaries. This in my view means that if the suit land belonged to the deceased, it legally vested in the Plaintiff to hold in trust for the beneficiaries to the deceased's estate.

I thus, respectfully disagree with Counsel for the 1st and 2nd Defendants' submission that Letters of Administration, did not accord the Plaintiff locus to sue.

Meanwhile, **Section 191 of the Succession Act Cap 162** provides that Letters of Administration entitle the administrator to all rights belonging to the intestate as effectual as if the administration had been granted at the moment after his or her death. The Supreme Court has emphasised this position in the case of ***Israel Kabwa versus Martin Banoba Musinga CA No. 52 of 1995***. It stated that and quote Court that;

“This section shows that the moment Letters of Administration are granted, the rights of the holder of the Letters of Administration relate back to the moment after death of the deceased”.

In view of these authorities, it is my finding that the Plaintiff is entitled to sue for acts committed against the deceased’s’ estate which preceded the grant of Letters of Administration. This includes acts, allegedly committed by the 1st and 2nd Defendants.

Turning to the submission that this Court ought to find the Letters of Administration *null and void*, the Sections relied upon by Counsel for the 1st and 2nd Defendants were **Sections 278 and 202 of the Succession Act, Cap 162.**

Section 278 reads;

278. Inventory and account

(1). An executor or administrator shall, within six months from the grant of probate or Letters of Administration, or within such further time as the Court which granted the probate of Letters of Administration may from the time appoint, exhibit in that Court an inventory containing a full and true estimate of all the property in possession, and all credits, and also the debts owing by any person to which the executor or administrator is entitled in that character; and shall in the like manner within one year from the grant, or within such further time as the Court may from time to time appoint, exhibit an account of the estate, showing the assets which have come to his or her hands, and the manner in which they have been applied or disposed of.

(2) On completion of administration of an estate, other than an estate administered under the administration of Estate (Small Estates) (Special Provisions) Act, an executor or administrator shall file in Court final accounts relating to the estate, verified by an affidavit two copies of which shall be transmitted by the Court to the Administrator General.

It is worthy to note that the provisions under **Section 278** are mandatory. See *Piara Sign & anor versus Sukhveer CS No. 52 of 2012.*

Section 202 also provides that;

202. Subject to Section 4 of the Administrator General's Act, an administration shall be granted to the person entitled to the greatest proportion of the estate under Section 27

I must observe that under **Section 234(1) of the Succession Act Cap 162**, Letters of Administration can only be revoked or annulled by Court for a just cause. Under subsection 2 of the same, just cause means;

- (a)..... or*
- (b) that the grant was obtained fraudulently by making a false suggestion or by concealing from the Court something material to the case.*
- (c) that the grant was obtained by means of an untrue allegation of a fact essential in a point of law to justify the grant, though the allegation was made in ignorance or inadvertently'*
- (d) or*
- (e) that the person to whom the grant was made has wilfully and without reasonable cause omitted to exhibit an inventory or account in accordance with part XXXIV of this Act, or has exhibited under that part an inventory or account which is untrue in a material respect.*

I have not come across any evidence by the 1st and 2nd Defendants tending to show a just cause for annulment of the grant. I find no proof that the grant was obtained fraudulently, or obtained by making an untrue allegation of facts essential to exhibit an inventory or account so as to bring the claim under the mandatory provisions of Section 278 of the Act.

I am mindful of the fact that even if there was proof pointing to such allegations, the 1st and 2nd defendant are neither the right persons to raise such claims, because they have no nexus to the estate of the deceased, not is this Court the right one to address such claims.

Ultimately, I am convinced that the Plaintiff is an administrator of the of the deceased's' estate and; has no power to sue the 1st and 2nd Defendants for act, allegedly committed against the deceased's' estate, preceding the grant of Letters of Administration.

That said, I must now determine whether the plaint discloses a cause of action against the 1st and 2nd Defendants.

I agree with both Counsel on the positions in the cases of ***Kapeka Coffee Works Ltd versus NPART***, (*supra*) and ***Auto Garage & Anor versus Motokov*** (*supra*). These positions have been reiterated in the **Supreme Court** decision of ***Tororo Cement Co. Ltd versus Frokina International Ltd. SCCA No. 2/2001***. Accordingly, the plaint must disclose the following elements adjunctively;

1. That the Plaintiff enjoyed a right,
2. That, that right was violated and;
3. That the violation was by the Defendants.

It is trite that Court is only to look at the Plaint and annexures thereto in determining whether it discloses the above elements.

The Plaintiff submitted that the suit land belonged to the late Peteralina Mweyanwa. That his right and the beneficiaries to the estate of the deceased was violated when the 1st and 2nd Defendants became registered as proprietors of the suit land.

From the plaint and its annexures, I have been able to find that the Plaintiff as an administrator has shown that the Defendants have violated the interests of the deceased's estate by their current registrations as proprietors of the suit property. The plaint shows that the Plaintiff enjoyed a right (as an Administrator) and that it is the Defendants who have violated the said right.

I do find that the plaint therefore discloses a cause of action against the 1st and 2nd Defendants.

Preliminary objection 3

Counsel for the 1st and 2nd Defendants submitted that the Plaintiff admitted the 1st and 2nd Defendant's defence when he failed to reply to the written statement of defence. He relied on **Order 8 R.18 (1) of the Civil Procedure Rules**. Counsel for the Plaintiff on the other hand, did not respond to this submission in his written submissions on the preliminary objection. The provision relied in by Counsel provides as follows;

18. Subsequent pleadings.

(1) A Plaintiff shall be entitled to file a reply within fifteen days after the defence or the last of the defences has been delivered to him or her, unless the time is extended.

With much respect to Counsel for the 1st and 2nd Defendants, I see nothing in the provision making failure to reply to a written statement of defence, a point of law.

Besides that; under Order 8 R.18(4) of the Civil Procedure Rules, the Plaintiff need not reply once the Defendant has joined issues upon the written statement of defence, without adding any further pleading to it.

It can be seen from the written statement of defence, that the 1st and 2nd Defendants joined issues when they denied every allegation contained in the plaint without adding anything else. It is therefore the findings of this Court that this ground fails.

Preliminary objection 4

I need not express my opinion on this ground because the Plaintiff actually paid Court fees. This is witnessed by a stamp of the Court Registry at the top corner of the back page of the Court file.

Possibly, Counsel for the 1st and 2nd Defendants did not see this when he raised the objection.

I further find that this ground should also fail.

In the result, there is no merit in the preliminary objection.

It is dismissed with costs in the cause.

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Henry I. Kawesa

JUDGE

9/05/2018

9/05/2018:

Nasser Lumweno for the Plaintiff.

Mulangira for the 1st and 2nd Defendant.

1st and 2nd Defendant present.

Plaintiff absent.

Court:

Matter for Ruling.

Ruling communicated to the parties above.

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Henry I. Kawesa

JUDGE

9/05/2018

Mulangira:

Now that we have got the Ruling, we pray for time frame to schedule and file our statements.

Court: Let a joint scheduling memorandum be filed by 30th March 2018.

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Henry I. Kawesa

JUDGE

9/05/2018