

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(LAND DIVISION)
MISCELLANEOUS APPLICATION NO. 1192 OF 2020
(ARISING OUT OF CIVIL SUIT NO.225 OF 2020)

FATEMABAI FAZLEHUSSEIN PATWA -----APPLICANT

V

1.BEOART LIMITED

2.BYENSI JAMESON ----- RESPONDENTS

Before: Hon. Lady Justice Olive Kazaarwe Mukwaya

RULING

This application is brought under section 98 of the Civil Procedure Act, Order 6 rules 30(1) and 31 and Order 52 rule 1 and 2 of the Civil Procedure Rules seeking orders that the Respondent's plaint in Civil Suit No.225 of 2020 be struck out on grounds that it discloses no reasonable cause of action against the Applicant and was filed without authority.

Grounds of the Application

- 1) On 11th March 2020, the Respondents filed Civil Suit No. 225 of 2020 in the land Division of the High Court alleging that the Applicant trespassed on their land comprised in FRV 1532, Folio 1, Plot 26, William Street, Kampala.

- 2) Civil Suit No. 225 of 2020 discloses no reasonable cause of action against the Applicant and was filed without authority.
- 3) Civil Suit No. 225 of 2020 was filed by a non-existent entity, the 1st Respondent.
- 4) The Respondents have vicariously filed fraudulent suits against members of the public to deprive them of their properties.
- 5) It is in the interest of justice that the application be granted with costs to the Applicant.

Reply by the 1st Respondent

Mr. Byensi Jameson, the 2nd Respondent swore an affidavit in reply to the Application. He averred that the 1st Respondent is a duly incorporated company with the 2nd Applicant and others being directors having been registered on the 14th February 2007. Mr. Byensi added that Sikander Lalani in connivance with officials from Uganda Registration Services Bureau(URSB) fraudulently incorporated a company with almost similar names to the 1st Applicant “BAOART” which he attempted to use in grabbing the 1st Respondent’s land in Kololo.

The 1st Respondent’s complaint to URSB about the same was not concluded in their favour causing the 1st Respondent to challenge the decision in a suit that is still pending before the Court.

Rejoinder

Ms. Fatemabai Fazlehusein Patwa, the Applicant, in rejoinder, stated that the Respondents have not made out a case as to why the suit ought not to be struck out on grounds that the plaint does not disclose a reasonable cause of action. Further that the 2nd Respondent has not rebutted the evidence showing that it is non-existent. She added that she was not a party to the Civil Suit wherein the 1st Respondent is challenging the decision of the Uganda Registration Services Bureau. There were therefore no grounds

to stay the proceedings before this Court pending determination of the Civil Suit challenging the Bureau's decision on the existence of the 1st Respondent.

Both Counsel for the Applicant and the Respondents filed submissions which I have perused.

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Issue

Whether the plaint in Civil Suit 225 of 2020 ought to be struck out for failure to disclose a cause of action under Order 6 Rule 30 of the CPR?

RESOLUTION

10 A perusal of the plaint in Civil Suit 225 of 2020 indicates under paragraph 1 that;

“the 1st Plaintiff (Beoart Ltd) is a private Limited Liability Company duly incorporated under the laws of the Republic of Uganda with capacity to sue....”.

And the 2nd Respondent admits in the affidavit in reply, under paragraph 6 that;

15 *“...the Registrar unfairly dismissed the 1st Respondent (BEOART LIMITED) 's claim and unjustly allowed the said Sikander Lalani to change the sham company known as BAOART and ordered for the file to be edited to reflect BEOART”.*

What the 2nd Respondent did not add was the details of the findings of the Registrar General. In his letter to both Counsel for the 1st Respondent and Counsel for Mr. Sikander Lalani dated 5th February 2015, the Registrar General stated as follows;

20 *‘The Company that is stated to be registered on the 14th February 2007 as BEOART LTD bore a serial number that belonged to another company called Pace Uganda Limited. In addition, the physical register does not display any BEOART LTD, though the same is displayed in the soft copy. In conclusion, since the soft register is derived from the physical register, BEOART LTD of 14th February 2007 cannot*
 25 *purport to exist without a mother register.*

Accordingly, based on the available records, the BEOART LTD of 2005 whose Directors and shareholders are Mr. Sikander Lalani and Dragomir Lakic, is the authentic company”.

This decision is the premise upon which the Applicant makes this application. Uganda
 5 Registration Services Bureau, under Section 4 of the Uganda Registration Services
 Bureau Act Cap 210, has the function of maintaining registers, data and records on
 registration affected by the bureau. A function it performed in arriving at its decision of
 5th February 2015. The decision is the subject of a challenge in Civil Suit 869 of 2015.
 Until the decision is overturned by a competent tribunal, it remains the position that the
 10 1st Respondent is not recognised as an existent company. And was therefore not a legal
 person with the capacity to sue within the meaning of Order 1 rule 1 of the Civil
 Procedure Rules.

Black’s Law Dictionary reads;

*“So far as legal theory is concerned, a person is any being whom the law regards as
 15 capable of rights and duties”.*

In the instant suit, BEOART Limited was stripped of its legal status by the decision of
 the Uganda Registration Services Bureau and this position is yet to be overturned. In
 the premises, I find I must overrule the Respondents objections and prayer for stay of
 these proceedings, which could only be entertained if the Respondents were possessed
 20 of legal rights to bring this suit which they were not. The cause of action in the plaint
 arises from the 1st Respondent’s claim that they are a legal entity which they are not. I
 find accordingly that the plaint does not disclose a cause of action against the Applicant.

I allow this application with orders as follows;

- 1. The Respondent’s Plaint in Civil Suit No. 225 of 2020 is struck out for being
 25 filed by a non-existent entity and therefore discloses no cause of action under
 Order 6 rule 30 of the Civil Procedure Rules.**

2. Costs of the Application to be met by the 2nd Respondent.

Olive Kazaarwe Mukwaya

5 **Judge**

12th February 2021

Delivered by email to Counsel for the parties.