

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

LAND SUIT NO. 396 OF 2020

1. DAVID SSEKYONDWA
2. STEPHEN BUKENYA ::::::::::::::::::::::::::::::::::::::: PLAINTIFFS

VERSUS

1. BETTY MATOVU
2. IRENE MATOVU
3. PAUL MATOVU (Administrators of the estate of the late
Patrick Matovu's estate):::::::::::::::::::::::::::::::::::::: DEFENDANTS

BEFORE HON. JUSTICE NAMANYA BERNARD

RULING

Introduction:

1. This Ruling is in respect of preliminary objections by the defendants on several points of law which would have the effect of having the plaint rejected.

2. The plaintiffs brought this suit against the defendants in which it is claimed that the 1st plaintiff is the registered proprietor of land comprised in Block 600 Plot 602 Busiro (formerly Block 600, Plot 51/52) (hereinafter "*the suit land*"). The plaintiffs further seek for special damages of UGX 800,000,000 being the value for lost income; a permanent injunction against the

defendants; an order against the defendants from claiming the suit land; general damages; and costs of the suit.

3. The defendants aver that the plaintiffs are not entitled to the reliefs sought, and pray for the dismissal of the suit with costs.
4. On the 12 April 2022 when the matter came up for mention, counsel for the defendants informed Court that they had preliminary objections to raise on points of law.
5. Court directed both parties to file written submissions on the preliminary objections, which are on court record, and have been considered by this Court.
6. The plaintiffs are represented by *M/s Orone & Co Advocates* while the defendants are represented by *M/s AF Mpanga Advocates*.

Preliminary points of law raised by the defendants:

7. The defendants raised three preliminary points of law:
 1. The plaint discloses no cause of action by the 2nd plaintiff as against the defendants.
 2. The purported agreement for sale of land which forms the basis of the plaintiff's suit is void for uncertainty. Whereas the said agreement claims that the 1st plaintiff was sold part

of the land, it is impossible to ascertain the part of the land that was sold.

3. The purported tenancy agreement relied on by the plaintiffs to claim loss of UGX. 800,000,000 was to be effective upon excavation of the land by the purported tenant. Since the purported tenancy agreement was terminated before it was effective (as no excavation was commenced), there is no contract to sustain a cause of action.

1st preliminary point of law:

8. Counsel for the defendants submitted that the 2nd plaintiff does not have a cause of action against the defendants. He relied on **Order 6 rule 30(1)** and **Order 7 rule 11** of the **Civil Procedure Rules, S.I 71-1 (“CPR”)**, and the cases/authorities of *Auto Garage and Others v. Motokov (No. 3), Civil Appeal No. 22 of 1971*; *Dunlop Pneumatic Tyre Company Limited v. Selfridge and Company Limited [1915] AC 847*; *Game Concepts v. Mweru Rogers, High Court Civil Appeal No. 71 of 2012*; and *the Law of Contract by Chesire, Fifoot & Furmston, 13th Edition*.
9. Counsel for the defendants further submitted that:
 1. the 1st plaintiff is the purchaser of Block 600 Plot 602 Busiro and NOT the 2nd plaintiff. That the order sought for prohibiting the defendants from claiming land does not concern the 2nd plaintiff, him not being the registered

- proprietor. Further, that the 2nd plaintiff does not appear on the certificate of title attached to the plaint as *annexure D*, and therefore has no right to pursue the orders he is seeking in the plaint. Counsel further asserted that the 2nd plaintiff is not a party to the agreement attached to the plaint as *annexures F* and *G*, but only appears as a witness to the agreement.
2. the 2nd plaintiff's suit as against the defendants does not show what right the 2nd plaintiff enjoyed, how it was violated, and that the defendants are liable. He submitted that the suit ought to be struck out.
 3. the purported agreement for sale of land which forms the basis of the plaintiff's suit is void for uncertainty thus void *ab initio*, and cannot support the suit.
 4. the tenancy agreement from which a claim for UGX 800,000,000 is premised became void upon the excavation becoming impossible, and cannot be enforced.
10. In response, counsel for the plaintiffs submitted that:
1. the 2nd plaintiff enjoyed a right as provided for under the *Constitution*, that the right was violated by his arrest and detention at Nsangi Police Station on the basis of false information provided by the defendants, and that the defendants are liable in costs.
 2. the defendants are relying on facts and not points of law, and further that after the excavation of the land commenced,

there was intervention from Uganda Police which ordered the plaintiffs not to undertake further activities on the suit land.

3. the defendants have raised issues of fact and, tendered in evidence from the bar.

11. Counsel for the plaintiffs relied on the cases of *Mukisa Biscuit Manufacturing Co Ltd v. West End Distributors Ltd* [1969] E.A 696; *Animal Feeds v. Attorney General*, Civil Suit No. 788/90; *Mugwany Patrick v. Attorney General*, Civil Suit No. 154 of 2009; *Dr. Denis Lwamafa v. Attorney General*, H.C.C.S No. 79 of 1983 [1992] 1 KALR 21; *Ouma v. Nairobi City Council* [1976] KLR 298; *F. Zaabwe v. Orient Bank Ltd & Others*, S.C.C.A No 4 of 2006; *J. Okello Okello v. UNEB* S.C.C.A No. 12 of 1987; and *Kampala Bottlers Ltd v. Damanico (U) Ltd*, Civil Appeal No. 22 of 1992 [1993] UGSC 1; *Re Christine Namatovu Tebajjukira* [1992-1993] HCB 85; and *Yuda Lutta Musoke v. Greenland Bank (In Liquidation)*, H.C.C.S 506/2001.

Consideration and resolution:

12. Under **Order 6 rule 30(1)** and **Order 7 rule 11** of the **CPR**, a plaint shall be rejected if it does not disclose a cause of action. In the case of **Auto Garage** (supra), *Spry V.P* held that:

“If a plaint shows that a Plaintiff enjoyed a right, that the right has been violated and that the Defendant is liable, then, in my opinion, a cause of action has been disclosed...”

13. It is the law, that the question as to whether or not a plaint discloses a cause of action, has to be decided on perusal of the plaint alone together with its annexures (see the case of ***Nansubuga Josephine v. Vision for Africa, High Court Civil Suit No. 969 of 2005***).
14. Turning to facts of the instant case, the relevant parts of the plaint are reproduced below.

Paragraph 5(d) of the plaint states:

“That on the 14th of May 2020 the defendants who are the administrators of the late Isaac Matovu Patrick’s estate and their agents used and caused the arrest of the plaintiffs that they had connived to criminally trespass on the land comprised on block 600, plot 602, Busiro.”

Paragraph 5(e) of the plaint states:

“That the plaintiffs were later released on police bond at Nsangi Police Station under SD ref 41/11/05/2020 due to the actions of the defendants. [Copies of police bond forms are hereto attached and marked as “E1” and “E2”].

Paragraph 5(f) of the plaint states:

“That on the 9th of May 2020 and 10th of May 2020, the defendants placed on CBS radio station 88.8 FM, negative messages intended to make the plaintiffs to have criminally trespassed on the suit land.”

15. The plaintiffs assert that the defendants caused their arrest on allegations of having criminally trespassed on the suit land. A plain reading of the plaint reveals that the main complaint of the 2nd plaintiff appears to be his arrest and detention at Nsangi Police Station, that he blames on the defendants. The 2nd plaintiff has a right to personal liberty as provided for under **Article 23(7)** of the **Constitution of Uganda**, and he claims that his right was violated as a result of false information provided by the defendants to the police, and that the defendants are liable for the damage caused.
16. The finding of this Court is that the 2nd plaintiff has a cause of action against the defendants.

2nd and 3rd preliminary points of law:

17. It was submitted for the defendant, that the purported agreement for sale of land which forms the basis of the plaintiff's suit is void for uncertainty, to the extent that it is impossible to ascertain the part of the land that was sold.
18. It was further submitted for the defendant, that the purported tenancy agreement relied on by the plaintiffs, to claim loss of UGX. 800,000,000, was terminated before it was effective (as no excavation was commenced), and that therefore, there is no contract to sustain a cause of action.

19. On the part of the plaintiffs, it was submitted that, these two preliminary objections raise issues of fact, requiring evidence, making it difficult for them to be disposed of, at this preliminary stage. Counsel faulted counsel for the defendants, for adducing evidence from the bar.

20. In my opinion, the 2nd and 3rd preliminary points of law relate to the validity and enforceability of the purported agreement for the sale of land, and the tenancy agreement, which are issues for trial, and cannot be disposed of, at the preliminary stage. For example, while the defendants assert that the purported tenancy agreement cannot be enforced because it was contingent on the excavation of the land, which never happened (according to the defendants), the plaintiffs assert that the excavation of the land actually took place. This would require evidence to be adduced by the parties to enable the Court to make a decision on the matter.

Conclusion:

21. I am satisfied that the plaint as it stands, shows a cause of action by the 2nd plaintiff, as against the defendants. Accordingly, the preliminary points of law raised by the defendants have no merit.

22. In the result, **I ORDER** as follows:

a) The preliminary points of law raised by the defendants are hereby **DISALLOWED**.

b) The costs of this objection shall abide the outcome of the suit.

I SO ORDER.

NAMANYA BERNARD
Ag. JUDGE
9th September 2022