THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MPIGI
CIVIL SUIT NO. 22/2019

CORNELIUS MUKIIBI SENTAMU ::PLAINTIFF

VERSUS

1. LWANDASA SAMUEL
2. THE COMMISSIONER FOR LAND REGISTRATION
3. CISSY NASSOLO
4. FLORENCE NDAGIRE
5. KATEREGGA ALEX
6. MAYUMBA JOHN
7. JOSEPH HENRY NDAWULA
8. SENINDE RONALD KATEREGGA

(Administrators of the estate of late Sempa Ggoloba Joseph Kateregga) :::::::::::::::::::::::: DEFENDANTS

BEFORE: HIS LORDSHIP HON.JUSTICE OYUKO. ANTHONY OJOK, JUDGE

Ruling

Introduction:

The plaintiff brought the instant suit with a claim against the defendants jointly and severally for; a declaration that the 1st defendant is in breach of the deed of undertaking between the plaintiff and the 1st defendant dated 11th April, 2013 and agreement for sale of land dated 23rd May, 2015; a declaration that the plaintiff is the equitable owner of the land comprised in Block 112 Plots 8, 14, 18, 34, 35, 38, 39, 45, 47, 54, 78, at Kyeyitabya; declaration that the plaintiff is the legal owner of the land comprised in Block 112 Plot 45 at Kyeyitabya; an order for cancellation of the 1st defendant's name on the certificate of title of land comprised in Block 112 Plots 8, 14, 18, 34, 35, 38, 39, 45, 47, 54, 78, at Kyeyitabya and entry of the plaintiff's name onto the titles; an order for vacant possession and eviction against the 1st defendant, his agents, trespassers and/or any other persons claiming under the defendant; a permanent injunction restraining the 1st defendant, his agents/servants from transferring or disposing of the suit land to third parties or dealing with it in anyway; mesne profits for the 1st defendant's continued unlawful use of the plaintiff's land; general damages for breach of contract and costs of the suit.

Background:

It is the Plaintiff's case that he acquired land comprised in block 112 plots 8,38,39,14,18,78,34,35,45,47,54 at Kyeyitabya Mawokota from the 1st defendant

through an agreement dated 11th April 2013 wherein he was given part of the above land as consideration for the services he was to offer to the 1st defendant in courts of law.

That during the execution of their agreements land comprised in Block 112 Plots 35 and 45 were in the names of the 3rd – 8th defendants and or the late Joseph Kateregga whose estate they administer.

That the 1st Defendant later undertook to deliver vacant possession which he has to date failed/refused to do. That the 1st Defendant through numerous undertakings before and after acquisition of letters of administration contracted to avail the Plaintiff with all the land as demanded in the Plaint but has since not done so.

The Plaintiff hence filed this suit against the 1st Defendant for recovery of the 19.8acres of land comprised in part of Block 112 Plot 8, 38, 39, 14, 18, 78, 34, 35, 45, 47 and 54 land at Kyeyitabya-Mawokota by virtue of sale agreements signed between the two.

As the case was proceeding, the 3rd – 8th Defendants applied to join the suit and were added with their claim/interest on Plots 35 and 45. The 3rd – 8th Defendants claim that the agreement dated 11th April 2013 is a champertous agreement and unenforceable. The 3rd – 8th defendants claim that they are the owners of the suit land and the 1st defendant has never been registered on the same.

Representation:

At the hearing Mr. Sembuya Magula Douglas appeared for the plaintiff while Mr. Robinson Wamani appeared for the defendants. Both parties filed written submissions in regard to the preliminary points of law as raised by the 3rd – 8th defendants.

Submissions:

Privity:

Counsel for the plaintiff submitted that the objections raised by the 3rd – 8th Defendants all concern the agreements between the Plaintiff and 1st Defendant. The said defendants were not party to the agreement neither as parties or witnesses. Therefore, the objections raised by the applicants to the contract to

which they were not privy to should be dismissed. That this is upheld under the principle of the doctrine of the privity of contract which states that 'a contract cannot confer rights, or impose obligations on strangers to it.' That under common law, the doctrine of privity of contract, does not usually give rights or impose obligations on a person who was not a party to the contract regardless of the fact that they were intended to benefit from it. **(See: Among Mary Goretti vs Tracks International Limited HCCS No. 280 of 2010).** This doctrine protects parties to a contract from obligations that they never agreed to observe. Thus, only those parties that have an interest in the contract can sue for its enforcement. That the objections raised by the 3rd – 8th defendants are frivolous, they were not privy to the agreements and thus cannot legally and validly raise the objections.

Counsel for the 3rd – 8th defendants on the other hand in rejoinder submitted that the law on privity is clear, it provides that a third party cannot enforce the benefit of or be liable for any obligation under a contract which he or she is not a party. However this principle has exceptions that allow 3rd parties to enforce or claim liability from a contract he or she was not a party as per **Section 65** of the Contract's Act 2010. That the facts of this case are very clear and there is nowhere in their defence or in the 3rd -8th defendants' submission where it is contended that they wish to enforce the agreement that was executed between the Plaintiff and the 1st defendant rather the 3rd – 8th defendants contend that the Champerty Agreement is illegal at law and this honorable court cannot enforce the same.

Counsel argued that one cannot plead privity of contract where an illegality has been brought to the attention of court and none the less, the 3rd - 8th Defendants are not in any way claiming to enforce a benefit or liability from the contract rather informing court that the contract/ agreement is illegal.

Analysis of court:

I have carefully considered the submissions of both parties and it is my considered view that indeed the 3rd – 8th defendants are not parties to the two agreements between the plaintiff and the 1st defendant. Much as **Section 65** of the Contract's Act allows a third to enforce a contractual term, the 3rd – 8th defendants have stated that they have no intention of enforcing the provisions of the agreements but instead contend that the agreements were illegal and unenforceable and that this court cannot sanction an illegality.

It has long been established that illegality can provide a defence to civil claims under English law. As Lord Mansfield stated in **Holman v. Johnson (1775) 1 Cowp 341**, that;

> ***"No court will lend its aid to a man who founds his cause of action upon an immoral or an illegal act."***

In the instant case I find it pertinent to address the issue of illegality as raised by the 3rd – 8th defendants in regard to the agreements the plaintiff seeks to enforce.

Illegality:

Counsel for the 3rd – 8th defendants submitted that the sales agreement/deed of Undertaking between the Plaintiff and the 1st defendant dated 11th April 2013 which the plaintiff seeks to enforce is illegal and court should not sanction the same. That in the said under taking the 1st defendant gave the plaintiff several plots of land comprised in Block 112 including plots 35, 45 which belong to the 3rd – 8th defendants at Kyeyitabya Mawokota, Mpigi District in lieu of cash consideration to represent the 1st defendant to pursue revocation and issuance of Letters of Administration in his names at the High court of Nakawa.

Counsel for the 3rd – 8th defendants added that the law refers to such a contract as Champerty contracts which are defined as a bargain between a stranger and a party to a suit by which the stranger pursues a party's claim in consideration of receiving part of the judgment proceeds. **(See: Elizabeth Kobusingye v. Annet Zimbiha C.A No. 69 of 2019).**

That in **"Tritel on The Law of Contract" 12th Edition, Thomson Sweet and Maxwell-** champerty agreements are classified as illegal contracts. And are contracts by which one person agrees to finance another's litigation in return for a share in the proceeds, the former having no genuine or substantial interest in the outcome.

Counsel argued that in the instant case in the said agreement the Plaintiff was to be paid in lieu of cash consideration for his professional services 13 acres of land described as block 112 plots 8,38,39,14,18,78,34,35,45,47,54 at Kyeyitabya Mawokota which land was subject to litigation at the High court of Uganda at Nakawa and at the time of execution of this agreement the above plots were not in the name of the 1st defendant. Thus, this contract amounted to a champerty contract and such contracts are contrary to public policy and thus illegal and void.

(See: Kawamara Sam v. Richard Juuko HCCS .No.294 of 2009). That the law and courts have always declared champerty contracts unlawful and prohibited. **(See: Shell (U) Ltd & 9 Others v. Rock Petroleum & 2 Others HCMA No. 645 of 2010).** Thus, such agreements are unenforceable. **(See: Mkono & Co. Advocates v. JW Land War (1977) ltd (2002) E.A 145).**

Counsel concluded that since the agreement between the plaintiff and the 1st defendant is illegal, it cannot be enforced; to support his argument relied on the case of **In SINBA (K) and others v. UBC SCCA No.03 of 2014**, where court held that;

> ***"Court acknowledged the principle that no court can enforce an illegal contract or allow itself to be made an instrument of enforcing obligations alleged to arise out of a contract or transaction which is illegal, once the illegality is dully brought to the attention of court."***

Counsel for the plaintiff on the other hand submitted that whereas the 3rd – 8th Defendants averred that the sales agreement dated 11th April 2013 was a champertous agreement and thus illegal; it is important that the Court considers the agreement in full to establish whether the agreement is champertous or not. The agreement in question is between the Plaintiff and the 1st Defendant for the sale 13 acres of land comprised in part of Block 112 part of Daniel Sekiziyivu land.

Clause 1 states: the first party is the beneficial owner of all that land comprised in Block 112 at Kyeyitabya Mawokota, Mpigi and is desirous of pursing a grant of letters to administer the estate of the late Yosefu Lwandasa Lukwago.

Clause 2 states that the first party is desirous of pursuing a renunciation of the letters of administration granted to Fred Semu Lwanga by the Nakawa Court.

Counsel submitted that now the question before court is whether the agreement dated 11th April 2013 is champertous? That as per the definitions and authorities cited by counsel for the 3rd – 8th defendants none of these fall in the category of the subject contract. That the subject matter in the court were letters of administration of the estate of the late Yoswa Kafeero Waddimba and the estate of Daniel Sekiziyivu. The property for which the agreement was made was that of the estate of the late Yosefate Lwandasa Lukwago where the 1st Defendant was a beneficiary. That the entitlement was not dependent on the success of the grant letters of administration but it was a sale of the 13 acres by Lwandasa the 1st Defendant.

Counsel contended that other agreements in respect to the same land were made and consideration given. In the 11th April 2013 agreement consideration was the payment in lieu of professional fees which is permissible under the Advocates Act. The question of an advocate purchasing property from a client is permissible on condition that the advocate duly advised the client as diligently as he would have been if transacting with a stranger and that the transaction was advantageous to the client as it would have been if he had been transacting in the same on reasonable and equal terms with a stranger. **(See: Demarara Bauxite C. v. Hubbard [1923] AC 673).**

Counsel added that in this case there was no arrangement to share the spoils of litigation and the payment was not conditioned to the success of the litigation to be handled or at all. That the 3rd – 8th defendants are trying to misinterpret/misconstrue a straightforward document to which they are not parties. That this application was a wastage of time and an abuse of court process intended to intimidate the Plaintiff against pursing his rights as a purchaser of the suit land. Counsel relied on the case of **Kitaka & 12 others v Mohamood Thobani Civil Appeal No. 20 of 2021** where Court noted inter alia that:

> ***"The parties in civil matters are bound by what they say in their pleadings which have the potential of forming the record moreover, the court itself is also bound by what the parties have stated in their pleadings as to the facts relied on by them"***

Counsel for the 3rd – 8th defendants in rejoinder reiterated their earlier submissions that there is an illegality on court record and that the submissions by the plaintiff concerning the acquiring of Letters of Administration of the estate of Yoswa Kafeero Wadimba and Daniel Sekiziyivu and how the 1st defendant was pursuing revocation of letters of administration that animated to the agreement/ contract in dispute does not render the contract legal and enforceable in courts of law. That under the contract in question, there is nowhere it was stated that the plaintiff who is an advocate was purchasing land rather was to be paid in consideration of cash to represent the 1st Defendant in courts of law.

Analysis of court:

Counsel for the plaintiff contented that the impugned agreement is between the Plaintiff and the 1st Defendant for the sale of 13 acres of land comprised in part of

Block 112 part of Daniel Sekiziyivu's land. That the property for which the agreement was made was that of the estate of the late Yosefate Lwandasa Lukwago where the 1st Defendant was a beneficiary. That the entitlement was not dependent on the success of the grant letters of administration but it was a sale of the 13 acres by Lwandasa the 1st Defendant. He again states that in the 11th April 2013 agreement consideration was the payment in lieu of professional fees which is permissible under the Advocates Act.

Whereas **Section 50(1)** of the Advocates Act allows an advocate to make an agreement with his client in contentious matters. The sub section provides:

> ***"Notwithstanding any rules for the time being in force, an advocate may make an agreement with his or her client as to his or her remuneration in respect of any contentious business done or to be done by him or her providing that he or she shall be remunerated either by a gross sum or by salary".***

In the case of **Kituuma Magala & Co. Advocates v. Celtel (U) Ltd, [2001-20005] HCB Vol 3 at 72** court held that; advocates are free to enter into remuneration agreements with their clients in terms of section 48 and 50 of the Advocates Act as long as these agreements comply with the requirements provided by section 51 of the Act otherwise they are not enforceable.

The plaintiff in the instant case in my view is aimed at confusing this court, whereas he claims at one point that the agreements arose out of a sale transaction he again states that one agreement arose as payment in lieu of professional fees and another from a sale transaction.

I have taken time and looked at both agreements, the agreement dated 11th April 2013, is titled "**SALE AGREEMENT/DEED OF UNDERTAKING TO GIVE 13 ACRES OF LAND ON BLOCK 112 AT KYAYITABYA – MAWOKOOTA, MPIGI DISTRICT**." **Clause 3** of the agreement states and I quote;

"Whereas in lieu of paying cash consideration, the 1st party is willing to give 13 acres to the 2nd party as its professional fees."

This agreement is very clear that there was no sale therefore, counsel should not misguide court. The subject of this agreement is land the 1st defendant states to be a beneficial owner.

The terms of the remuneration in the agreement in issue in light of **section 50 (1)** of the Advocates Act are that in lieu of paying cash consideration, the 1st party is willing to give 13 acres to the 2nd party as its professional fees and not a gross sum or salary as provided for in **section 50(1).**This makes the remuneration agreement illegal as per **section 50(1)** of the Advocates Act.

This court has also to consider if the agreement date 11th April 2013 is one that complied with the requirements under **Section 51** of the Advocates Act which provides as follows:

> "*(1) An agreement under section 48 and 30 shall-*
>
> *a……..*
>
> *b ……*
>
> *c.contain a certificate signed by a notary public (other than a notary public who is a party to the agreement) to the effect that the person bound by the agreement had explained to him or her nature of the agreement and appeared to understand the agreement. A copy of the certificate shall be sent to the secretary of the Law Council by prepaid registered post."*

In the instant case it was not submitted or proved anywhere that the parties that were to be bound by this agreement were even brought before the notary public. It is a requirement of the law that each person bound had to appear and satisfy the Notary Public that they understood the nature of the agreement. There is no copy of a certificate signed by a notary public meaning that this was never done at all.

Whereas counsel for the plaintiff argued that the agreement date 11th April 2013 was not to benefit him from the proceeds of litigation I find that the same did not comply with the provisions of **Sections 50(1)** and **51** of the Advocates and therefore is illegal and unenforceable. This court cannot therefore, uphold the same.

The second agreement which is titled; **agreement of sale of land comprised in Block 112 Plot 45 at Kyeitabye, measuring 1.5 acres**, is dated 23rd March, 2015, however, the vendor claims ownership by virtue of a grant of Letters of Administration by the High Court Nakawa Division by consent order dated 1st day of December 2014. The said grant of Letters of Administration is not on record for this court to ascertain its existence, nor is reference made as to which estate the property is being sold from. The only Letters of Administration on record are those in regard to the estate of the late Sekiziyivu Daniel dated 10th April 2015. The plot that was sold to the plaintiff under this agreement is the same one the 3rd – 8th defendants claim to have interest in.

It is my considered view that in the absence of vital details as to which estate the property was sold from and if indeed the 1st defendant had powers as an Administrator to sell, I am unable to justify the sale as one that was valid especially where there is a third party claim from the 3rd – 8th defendants. The plaintiff did not support his claim with the Letters of Administration that gave the 1st defendant powers to deal with land the 3rd – 8th defendants claim to have interest in.

Submission on preliminary objection:

Counsel for the 3rd – 8th defendants submitted that the law states that a preliminary objection should be raised at an early stage of proceedings and cited the case of **Nelson Sande Ndugo v. Electoral Commission HCCS no.4/2006** (Unreported) where it was held that;

> *"A preliminary Objection ought to be raised at an earliest opportunity as determination of the same might have an effect of disposing of the suit……"*

Counsel raised a preliminary objection to the effect that the plaintiff dealt with the estate of the deceased before acquiring letters of administration. That there is no evidence that Letters of Administration for the estate of the Late Yozefati Lwandasa Lukwago were obtained by the 1st Defendant before and after entering into the agreement dated 11th April 2013 with the plaintiff to date. That the said agreement had plots therein including Plots 35 and 45 that belong to the 3rd – 8th defendants. Thus, the estate was being dealt without Letters of Administration.

Counsel went ahead to cite **Section 268** of the Succession Act which provides that a person who intermeddles with the estate of the deceased or does any other act which belongs to the office of the executor while there is no rightful executor or

Administrator in existence, thereby makes himself an executor of his or her own wrong.

Counsel also defined an intermeddler as a person who assumes the authority of an executor, becomes an executor de son tort. That intermeddling includes assuming authority to administer the estate of another when the person does not have such authority. An Administrator becomes one on getting Letters of Administration in respect of the estate of that deceased person. **(See: Annet Namirum Ndaula v. Bulondo and 2 Others, H.C.C.S No.27 of 2011).**

Further, that from the facts on court record the 2nd defendant and the plaintiff dealt with the estate of the deceased without acquiring Letters of Administration and as such this court should not be used to aid the works of intermeddlers to validate their transactions. A wrong is a wrong and court should not condone such acts of illegality. **(See: Makula International v. Cardinal Nsubuga Wamala, (1982) H.C.B 11)**. Thus, the suit be dismissed with costs.

Counsel for the plaintiff on the other hand submitted that the question relating to dealing in the estate without letters of administration, if subsequently the administrator appointed ratifies the actions the transaction is validated. That on the attachments to the Reply to the Written Statement of Defence are email communications and some of the subsequent agreements with the 1st Defendant ratifying the initial arrangement signed as an administrator. That the issues raised by the 3rd – 8th defendants require evidence to determine questions of controversy between the Plaintiff and the Defendants in deeper investigations of the matter. Counsel noted that preliminary objections relate to points of law, raised at the outset of a case by the defence without going into the merits of the case. In any preliminary objection therefore, there is no room for ascertainment of facts through affidavit/oral evidence.

Counsel however, went on to respond to the preliminary objection, that the 1st Defendant dealt with the estate of the late Yozefati Lwandasa Lukwago having been given powers under R4 by the late Yoswa Kafeero Waddimba. The estate was bigger than that of the late Daniel Sekiziyivu and part of the land was already bequeathed to the 1st Defendant. That the dealing in the estate did not amount to intermeddling in the estate since the 1st Defendant had an equitable interest in the suit land at the time of dealing in it in accordance with the 18th May 1991 document/ bequest and the fact that he was a beneficiary.

Counsel for the plaintiff further submitted that the transaction in the estate was to protect the estate and not to damage it. The suits subsequently instituted were aimed at protecting the estate from abuse. The administrator, the 1st Defendant later ratified the actions that were necessary for the protection of the estate. Counsel cited **Section 192** of the Succession Act which provides a "safety valve" for acts of a person who though acting in relation to the estate without Letters of Administration subsequently obtains the Letters of Administration as follows;

> *"Letters of administration entitle the administrator to all rights belonging to the intestate as effectually as if the administration has been granted at the moment after his or her death."*

That this provision invariably makes the grant of Letters of Administration in respect of actions of the administrator to relate back to the time of death of the deceased. The effect is that the grant validates the actions of the administrator taken prior to the grant of the Letters of Administration in respect of the estate of the intestate. In other words, actions which would ordinarily amount to intermeddling under the law are validated and hence ratified as having been legally done. Counsel relied on the case of **Joseph M. Nviri v Olwoc & 2 Others Civil Suit 926 of 1998) [2016] UGHCLD 55 (19 December 2016** where Justice Bashaija K. Andrew held as follows;

> *"As this relates to facts of the instant case, the sale agreement in respect of land clearly shows that it was executed between the vendor and the purchaser for payment in instalments. The first instalment was made on 12/4/1995 prior to the vendor obtaining Letters of Administration. In his pleadings, at paragraph 10 of the amended plaint, the plaintiff avers that he used part of the purchase price to apply for Letters of Administration which she obtained on 29/06/1995. This averment, which never envisaged the instant preliminary objection, if proved to be true would tend to show that the money was applied in the interest of, and for the benefit of the estate. Therefore, it would not fall within the acts that tend to the diminution or damage of the estate contemplated under Section 193(supra). I consider the objection is ill –timed, brought in bad faith, and also lacking in merit. It is dismissed with costs."*

Counsel concluded that the Plaintiff sued to get the land. He has never received it, so there has not been any intermeddling. And prayed that this court finds the

objections raised as ill timed, brought in bad faith and lack merit thus dismiss the same with Costs.

Counsel for the 3rd – 8th defendants in rejoinder submitted that the preliminary objections raised go to the root of the case which will help to save court's time. That these are matters of law that a party has violated and need no investigation. What is required of court is to simply look at the law and the annextures attached on the plaint. **(See: Kapeke Coffee Works Ltd v. Npart, Court of Appeal CA NO.3 OF 2000).**

Counsel for the 3rd – 8th defendants further submitted that the plaintiff's counsel contends that the position in **Section 192** of the Succession Act makes the provision invariably that the grant of letters of Administration in respect of the actions of the Administration relate back to the time of death of the deceased and that the grant validates the actions of the administrator taken prior to the grant of the letters of Administration in respect of the estate of the intestate this may be true as per **Joseph M. Nviri v. Palma Joan Olwoc, Civil Suit No. 926 of 1998**. However the facts in the above case are distinguishable from those that are before court. That it is evident that the 1st Defendant was intermeddling with the estate of the deceased since the letters of Administration had already been issued by the high Court of Uganda at Nakawa by then to Fredrick Semu Lwanga, his actions can not relate back.

Analysis of court:

Counsel for the 3rd – 8th defendants contended that there is no evidence that Letters of Administration for the estate of the Late Yozefati Lwandasa Lukwago were obtained by the 1st Defendant before and after entering into the agreement dated 11th April 2013 with the plaintiff to date. That the said agreement had plots therein including Plots 35 and 45 that belong to the 3rd – 8th defendants. Thus, the estate was being dealt with without Letters of Administration. The plaintiff on the other hand submitted that the acts of the 1st defendant were made good upon obtaining letters of Administration.

Counsel for the plaintiff argued that the matter at hand cannot be handled through a preliminary objection as it requires investigation.

That the 1st defendant sought to apply for Letters of Administration of the Late Yozefati Lwandasa Lukukwago, however, there is no evidence that the same were

ever granted to him. This in my view amounts to dealing with the estate of the deceased without letters of Administration and intermeddling with the estate of the deceased.

Secondly, I have however, carefully gone through the record and I do not see any Letters of Administration that were granted to the 1st defendant in regard to the estate of the Late Yozefati Lwandasa Lukwago that would have made good for his acts. It is my view that the court will not investigate what it has not been availed with.

I accordingly agree with the submissions of counsel for the 3rd – 8th defendant in this regard. And the preliminary objection is hereby allowed.

Cause of action:

Counsel for the 3rd – 8th defendants submitted that for one to establish a cause of action against another he or she must show that the elements which were highlighted in **Auto Garage v. Motov (1971) E.A 315** exist. That is that the plaintiff enjoyed a right; the right has been violated and the defendant is liable. If any of the above is missing, then a cause of action has not been established.

That in principle, the plaintiff must show a nexus between his grievances and the 3rd – 8th Defendant. That nowhere in the plaint does it mention that the plaintiff had a right to enjoy land comprised in Block 112 plots 35 and 45 that belongs to the 3rd to 8th defendants and he does not anywhere in the plaint mention that he had any dealing with them rather than the 1st defendant. That the Plaintiff does not demonstrate anywhere in the plaint that he took possession after entering into an agreement with the 1st defendant from 2013 to date an indication that the said land was encumbered and or was in possession of the defendants. That what is on court record is that the two plots of land at the time of execution of the agreement between the plaintiff and the 1st defendant, were in possession of the 3rd - 8th defendants and the same registered in their names and or in the name of the late Joseph Kateregga whose estate they Administer.

Counsel further submitted that the plaintiff does not disclose anywhere in the plaint that before acquiring the suit land, he carried out due diligence since he was not buying vegetables. **(See: Noame Juma and others v Nantume Ruth and others HCCS No.363 of 2010 and in the case Grace Manjeri Nafula v. Bridger Elly Kayanja and Another, HCCS No. 136 of 2011).**

Counsel concluded that **Order 7 Rule 11 (a)** of the Civil Procedure Rules provides that the plaint shall be rejected where it does not disclose a cause of action. That the provision calls for strict adherence to the law and in the instant case the plaint does not disclose any cause of action against the 3rd to 8th defendants. Counsel prayed that court rejects the plaint and dismisses the suit with costs.

Counsel for the plaintiffs on the other hand submitted that the pleadings disclose a cause of action against all the persons claiming interest in the land that was earlier sold by the 1st Defendant. That the facts in the pleadings indicate that the Plaintiff is entitled to land from the Plots and has not yet been curved out and given to him. The parties are claiming interest in land comprised in **Block 112 Plot 35** and **45** land at Kyeyitabya and that is the right he enjoys.

Counsel for the 3rd – 8th defendants submitted in rejoinder that the position of the law is that since the 3rd to 8th Defendants were added as parties to the suit, the Plaintiff ought to have amended his plaint to demonstrate his cause of action against them which he did not do. Thus, the plaint does not disclose any cause of action against the 3rd to 8th defendants.

Analysis of court:

A cause of action is defined as every fact which is material to be proved to enable the plaintiff succeed or every fact which if denied, the plaintiff must prove in order to obtain a judgment. **(See: Cooke v. Gull LR 8E.P 116, Read v Brown 22 QBD P.31).** It is disclosed when it is shown that the plaintiff had a right, and that right was violated, resulting in damage and the defendant is liable. This position has been reiterated in the Supreme Court decision of **Tororo Cement Co. Ltd v. Frokina International Limited SCCA No.2 of 2001.**

The question of whether a plaint discloses a cause of action must be determined upon perusal of the plaint alone together with anything attached so as to form part of it. **(See; Kebirungi v. Road Trainers Ltd & 2 others [2008] HCB 72, Kapeka Coffee Works Ltd v. NPART CACA No. 3 of 2000).**

In the present case, the plaintiff's facts giving raise to the cause of action under paragraph 5 of the plaint only show that his cause of action is as against the 1st defendant and not the 3rd – 8th defendants.

I accordingly, agree that the 3rd – 8th defendants upon being added as parties with interest in the suit land, the plaintiff ought to have amended the plaint which was not done. In the circumstances he has no cause of action against the 3rd – 8th defendants.

Unlawful consideration:

Counsel for the 3rd – 8th defendants quoted **Section 2** of the Contract Act on the definition of consideration as a right, interest, profit or benefit accruing to one party or forbearance, detriment, loss or responsibility given, suffered or under taken by the other party. That the definition of a contract suggests that one of the elements of a valid contract is that it must have lawful consideration. Thus, a contract is an agreement made with the free consent of parties, with capacity to contract for a lawful consideration and with a lawful object, with the intension to be legally bound. **(See: Section 10 of the Contract Act 2010).**

That **Section 19 (1) (e)** of the contract Act 2010 provides that for consideration to be unlawful it has to be declared immoral or against public policy by a court. That the consideration that was intended to be exchanged between the Plaintiff and the 1st defendant in the agreement executed between them dated 11th April 2013 is a Champerty Agreement which courts have declared to be against public policy. This is illegal and void.

Furthermore that **Section 19 (2)** of the contracts Act 2010 provides that an agreement whose object or consideration is unlawful is void and a suit shall not be brought for the recovery of any money paid or thing delivered or for compensation for anything done under the agreement.

Counsel concluded that, Block 112 Plots 35 and 45 were illegally acquired by the plaintiff from the 1st defendant who did not have letters of the Administration of the estate of Yozefati Lwandasa Lukwago. Counsel prayed that court finds the consideration unlawful as it offends the law.

Counsel for the plaintiff on the other hand submitted that the issues raised by the defendants all are factual in nature and require evidence. The consideration for purchase of **Block 112 Plot 45** was for seven million after acquisition of letters of administration. That the initial transaction was on numerous occasions ratified by the 1st Defendant and it was in the interest of the estate for preservation and protection of the same. That **Section 19** of the Contracts Act as a whole is not offended by any of the transactions between the Plaintiff and 1st Defendant.

Secondly that the defendants were not privy to the contract and cannot sue or bring an action on it. That the averments that the land belongs to them is a question of evidence, on the attachments to the reply to the Written Statement of Defence the area schedules and copies of titles indicating different names and transactions as opposed to those alleged by the defendants. This implies that the facts as stated by the defendants are contested and raise triable issues and thus Court cannot base on the same as though true to make a decision.

Counsel for the plaintiffs also submitted that parties have freedom to contract and agree on the terms they deem fit to be executed by them. **(See: Printing & Numerical Registering Company v. Sampson (1875) 19 Eq 462).**

Counsel for the 3rd – 8th defendants in rejoinder submitted that the two transactions that were entered into by the plaintiff and the 1st defendant were all illegal hence making the consideration invalid as per **Section 19** of the Contract 2010. That the plaintiffs submitted that the consideration of UGX 7,000,000/= for purchase of Block 112 Plot 45 was after acquiring letters of administration. Counsel argued that the said transaction was illegal since the letters of administration were obtained in violation of **Section 5** of the Administrator General's Act which provides that;

> ***"No grant shall be made to any person, except an executor appointed by the will of the deceased or the widower or widow of the deceased, or his or her attorney dully authorized in writing , authorizing that person to administer the estate of a deceased person, until the applicant has produced to the court proof that the Administrator General or his or her agent has declined to administer the estate or proof of having given to the Administrator General fourteen Clear day's definite notice in writing of his or her intention to apply for the grant ."***

That the above provision provides for strict adherence to the provision of the law. Counsel prayed that court be pleased to dismiss the plaintiff's case against them with costs as the main suit is an abuse of court process and the 3rd to 8th defendants have been made to incur expenses in defending a frivolous suit tainted with illegalities.

Analysis of court:

It is my considered view the two transactions that were entered into by the plaintiff and the 1st respondent were all illegal as already discussed above hence making

the consideration invalid as per the provisions of **Section 19** of the Contract 2010. This court will therefore, not sanction an illegality.

In a nut shell this court finds that the agreements dated 11th April, 2013 and 23rd March, 2015 were all illegally entered into by the plaintiff and the 1st defendant. The two agreements are hereby cancelled. In regard to the agreement dated 11th April, 2013 this court orders that the plaintiff files a bill of costs to be taxed as if the agreement had never been made.

In regard to the agreement dated 23rd March, 2015, this court orders that the plaintiff be refunded the purchase price of UGX 7,000,000/= with interest at court rate from the date of this ruling until payment in full.

This therefore, leaves the plaintiff with a claim only as against the 1st defendant who should pay him costs after the bill of costs is filed by the plaintiff and taxed accordingly.

The main suit is hereby dismissed without costs since the suit was initially instituted against the 1st and 2nd defendants and the 3rd - 8th defendants applied to be added as parties/defendants. The parties will all bear their own costs. I so order.

Right of appeal explained.

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OYUKO ANTHONY OJOK

JUGDE

01/DECEMBER/2022