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THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MPIGI
HCT-15-LD-MA-114 OF 2022

[Arising from Civil Suit No. 25 of 2018]

KIRIRI FARMS [U] LTD

10 RAJANIKANTA PATEL =====APPLICANTS

VERSUS

BUGAYWA CAROLINE=====RESPONDENT

BEFORE: HON. JUSTICE OYUKO ANTHONY OJOK, JUDGE

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RULING

The Application is brought by way of Notice of Motion under **Section 33** of the Judicature Act, **Section 98** of the Civil Procedure Act , **Order 6 rules 28, 29 & 30, Order 7 rules 11 (a) & Order 52 rule 1 and 3** of the Civil Procedure Rules against the respondent seeking the following orders:

- 20 a) That the Respondent's/ plaintiff's suit be dismissed and/or struck out.
 b) Costs of the suit and this application be provided for.

The grounds in support of the Application are contained in the Notice of Motion and the affidavit in support which I will not reproduce.

25 The respondent filed an affidavit in reply in opposition of the application which is on record.

Representation

Applicants were represented by M/s **MMAKS Advocates** while the respondent was represented by M/s **Nzige, Jamero and Company Advocates**.

30 They both made oral submissions and Counsel for the Respondent raised a preliminary objection.

Preliminary objection:

Counsel for the Respondent on raising a preliminary objection argued that there is non-disclosure of a cause of action and prayed that costs be provided for. He referred to the affidavit of **Toshak Patel** in support of the application. He stated

5 that paragraph 6 of the plaint states their rights are injured and that by not pleading such damage in their pleadings amounts to an abuse of court process.

He stated that the subject matter of the suit **Block 299 Plots 101 and 102** measuring **6 acres** does not hold a lease hold interest, that the 99 years have not yet expired and it was transferred to Kiiriri Cotton Company Ltd. That the lease agreement of
10 99 years expires on the 31st January, 2100 before that the transfer of the mailo was made.

He further argued that the Applicants should wait until the lease of the 2nd Respondent expires on 31st January, 2100 or buy out the interest to enable them enjoy the unencumbered version. This suit is therefore an abuse of court process.
15 He prayed that the plaint should be struck out for disclosing no cause of action.

He further submitted that if a reversionary interest has been injured that fact must be pleaded in the plaint with details of the alleged damage. In the instant case no such damage was pleaded. He quoted the case of **Elena Nakabiri and 2 Others v. Masaka District Growers Co-operative, Civil Suit No. 835 of 1983**, in support of
20 his argument where it was held that;

*“Therefore, only the government which was in possession of the suit property was entitled to sue for trespass, the only rider being that the reversioner has a cause of action if his or her reversionary interest has been injured; a fact that must be pleaded in the plaint with details of the alleged
25 damage. In the instant case no such damage was pleaded, since government was in legal possession of the suit property, the defendant union, as allocatee of the property by the government was equally in legal possession of the same. The defendant union was therefore, not a trespasser on the suit property.”*

30 That the suit in the above case was dismissed as the plaintiff had no cause of action against the defendant.

In reply counsel for the Applicants submitted that remedies sought by the Plaintiff are a declaration that the 1st, 2nd and 3rd Defendants who are the Applicants fraudulently dealt with the suit land to the detriment of the plaintiff.

35 He stated that the lease hold interest which is encumbrance on the mailo title of 99 years based on the lease hold agreement. He also said the Leasehold agreement is forged.

He stated that court has to investigate the entire lease agreement not on the face value. Then the Respondents would have put an encumbrance on the title not to

5 wait for over 16 years beyond the statutory period of 12 years under the Limitation Act.

He added that his prayers deal with the illegalities. He said that the 2nd Defendant is not recovering clean things but contaminated products, the lease hold title was created on the 11th September, 2017 and is a fresh baby.

10 Counsel submitted that illegality is subject to investigation. The encumbrance is the damage or injury caused to the Plaintiff. He said that the Mortgage should be put on the title. He referred to annexure “D” a ruling in which the Applicants lost, involving the 1st and 2nd applicants who are the same in this suit.

15 He referred to the Lease hold title as forged and has to be investigated. He prayed that the application be dismissed with costs.

In rejoinder it was submitted for the respondent that he who alleges under **sections 101 and 102** of the Evidence Act ought to prove the allegations. That in this case the Plaintiff alleges that the lease agreement was forged. However, in his affidavit in reply does not bring any proof of alleged fraud.

20 That the Plaintiff /Respondent ought to bring evidence to prove allegation of fraud against the Applicant.

Annexure A and B indicate the owners of the copies of the certificate of title. And the only way this court can move is if counsel had availed this court certified copy of the register (white page) record that encumbrance does exist. He noted that to
25 equate a lease to a mortgage is misleading. He said there is no limitation in time to register a lease. He referred to **Sections 92 (2) and 64 (2) of the Registration of titles Act**.

30 He submitted that the injury was pleaded in the plaint and referred to paragraph 5, 6 (b). That the Mailo and lease hold interests are distinct on the same piece of land.

Further, that the agreement must be pleaded in the plaint and the exact nature of the claim. He stated that the parties failed to have a joint scheduling memo. And the pleadings do not disclose a cause of action.

Analysis

35 I have carefully considered the submissions for both sides on the preliminary objection while resolving the same.

I have also considered the report from the Commissioner Land Registration which states that:

5 1) There exists Instrument No. 4053 which is a Lease Agreement between
Ibulaimu Galukande Omwaziza and the National bank of India Limited. It
reflects as an encumbrance on the title for land comprised in MRV 181 Folio
19. It formed the creation of the Lease hold Certificate of title for LRV 66
Folio 22.

10 2) Instrument No. 27001 reflects as an Encumbrance on the Certificate of title
for MRV 181 Folio 19. It formed the basis of issuance of leasehold
Certificate of title for Land Comprised in LRV 138 Folio 1.

15 On that basis I find that there is a cause of action against the Applicants in Civil
Suit No. 25 of 2018.

The matter has to be investigated, it cannot be determined at this point until I hear
the evidence in the main suit.

20 The preliminary objection is therefore overruled. Costs in the cause. The matter
shall be fixed with the earliest date possible and have it heard and determined. Let
parties file the necessary documents.

I so order.

Right of appeal explained.

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Oyuko Anthony Ojok
Judge
23/09/2022.