

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
[LAND DIVISION]
HCCS. NO. 0961 OF 2018

INALU TRADING COMPANY LTD

.....

PLAINTIFF

Vs.

1. ATTORNEY GENERAL

2. ZADDOCK MADIRI SYONG'OH

.....DEFENDANTS

BEFORE: - HON. LADY JUSTICE P. BASAZA - WASSWA

R U L I N G

[ON A PRELIMINARY OBJECTION]

Representation:

Mr. Arinaitwe Peter for the Plaintiff.

Mr. Mayambala Michael for the 2nd Defendant.

(The suit against the 1st Defendant was dismissed under the provisions of Order 5 Rule 1 (2) & (3) of the CPR).

Introduction:

- [1] The present suit was brought by the Plaintiff Company; Inalu Trading Company Ltd ('Inalu') against the Defendants in respect of property comprised in **LRV 1415 Folio 1, Block 244 Plot 3793 at Muyenga- Kisugu ('the suit property')**. The Plaintiff claims to

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be the lawful owner of the suit property and contends that it lawfully purchased it in 2017.

[2] The 2nd Defendant, Mr. Zaddock, who is the remaining Defendant in this suit¹, contends that **M/s Marketing Support Services Ltd**, in which he is a Director, is the lawful registered proprietor of the suit property, and that **Inalu** has neither legal, nor equitable interests in the suit property.

[3] At the commencement of the scheduling / hearing of this matter, Mr. Mayambala; learned Counsel for the Defendant, raised a preliminary objection by way of written submissions, to which Mr. Arinaitwe replied in the same manner, hence this Ruling.

Submissions of Counsel on the Preliminary objection:

[4] Mr. Mayambala's objection is to the effect that Inalu's suit does not disclose a Cause of action against his client; Mr. Zaddock Madiri Syon'oh (the 2nd Defendant). He argued that since Mr. Zaddock was not privy to the sale agreement (annexture 'A' to the plaint) on which the suit is based, he cannot therefore be sued on a contract to which he is not a party.

For his proposition Mr. Mayambala cited *inter alia*;

- i) **Lunco Constructors Ltd v The Attorney General of Uganda & Anor²**
- ii) **Justice Anup Singh Choudry v Mohinder Singh Channa & Anor³**
- iii) **John Tiborugaba Kasangaki & Anor v Rajeev Jain & 3 Ors⁴**

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¹ Following the dismissal by court of the Plaintiff's suit against the Attorney General

² HCCS No. 0318 of 2004 (Comm. Div.)

³ HCCS No. 335 of 2014 (Civ. Div.)

⁴ CACA No. 69 of 2013

- [5] In reply, Mr. Arinaitwe learned Counsel for Inalu (the Plaintiff Company) submitted that nowhere is the cause of action of his client based on a contract. That rather, it is based on illegal dispossession of land and illegal eviction of Inalu by the Defendants. He prayed that Mr. Mayambala's preliminary objection be overruled with costs.

Decision of Court:

- [6] In determining whether or not a plaint discloses a cause of action, a court is required to look at the plaint only.

Order 6 Rule 1 and Order 7 Rule 1 (e) and 11 (a) of the Civil Procedure Rules provide that (paraphrased);

A plaint shall contain a brief statement of the material facts constituting a cause of action and when it arose. Where it does not contain a cause of action, it shall be rejected.

- [7] A cause of action is defined in **Black's Law Dictionary**⁵ as;

'A group of operative facts giving rise to one or more bases for suing...'

- [8] A Cause of action in a plaint is said to be disclosed if three (3) elements are pleaded therein, namely;

- a) Of the existence of the Plaintiff's right
- b) Violation of that right and
- c) Of the Defendant's liability for that violation'

See **Ismail Serugo vs. Kampala City Council**⁶

- [9] The objection raised by Mr. Mayambala relates to only the 3rd element (c) of the list of elements above. He argues that the 3rd element is not disclosed in the plaint.

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⁵ 9th ed. at page 251

⁶ S/C Constitutional Appeal No. 2 of 1998.

[10] I carefully perused the plaint only, and found:

- a) That as rightly pointed out by Mr. Arinaitwe, the argument by Mr. Mayambala is erroneous. It is not true that Mr. Zaddock was sued on the basis of the sale agreement marked 'A' to the plaint. Refer to paragraph 4 above.
- b) That in clauses 3.6, 3.7, 3.8, 3.9, 4.1, 4.2 & 4.3 of the plaint, the Plaintiff alleges that through deceit and treachery, without any lawful court order, the Defendants evicted it (Inalu) from the suit property and took over possession thereof, and also took away items belonging to Inalu, which were never returned.

[11] From paragraph [10] (b) above, I find that clearly in its plaint, Inalu pleaded the 3rd element, and indeed all the three (3) elements of a cause of action, as defined in the Ismail Serugo case (supra), against Mr. Zaddock.

[12] In the result, I find no merit in the preliminary objection raised, and I accordingly overrule it with costs to M/s Inalu Trading Company Ltd. The hearing of this suit shall proceed.

I so order,



P. BASAZA - WASSWA

JUDGE

December 5, 2022

Ruling delivered electronically on the Judiciary ECCMIS system and via email to the parties.