THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

[LAND DIVISION]

HCCS. NO. 044 OF 2021

KIRUMIRA CHARLES				PLAINTIFF
		V.		
1.	BIRUNGI GRACE			
2.	NAKIRIJJA JOYCE			
3.	MUWANGA JAMES		D	EFENDANTS

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

RULING

[ON TWO (2) PRELIMINARY OBJECTIONS]

Representation:

- Mr. Matovu Muhammed for the Plaintiff.
- Mr. Waiswa Ramadhan for the 1st & 2nd Defendants.
- Mr. Okwir Jovino for the 3rd Defendant.

Introduction:

This suit was brought by Mr. Kirumira; the Plaintiff against the Defendants in respect of property comprised in **Busiro Block 383 Plot 13377 at Kitende in Wakiso District** (**'the suit property'**). He contends in his plaint that by virtue of, and on the basis of the terms contained in a memorandum of understanding



- (MOU) attached to the plaint and marked 'AA', he entered into 'a business arrangement' with Ms. Birungi; the 1st Defendant.
- [2] He (Mr. Kirumira) contends further that Ms. Birungi is in breach of the terms of the MOU and in breach of trust. He alleges that contrary to the terms of the MOU, Ms. Birungi fraudulently transferred the suit property into the name of Ms. Nakirijja, her mother; (the 2nd Defendant), and that the latter subsequently sold the same to Mr. Muwanga; the 3rd Defendant.
- [3] He seeks *inter alia* for an order of cancellation of the transfer of the title to the suit property into the name of Ms. Nakirijja, and for an order vesting the same into his own name.
- [4] In answer, in a written statement of defence by the 1st & 2nd Defendants, Ms. Birungi denies ever entering into 'any business arrangement' with Mr. Kirumira, and contends that the purported MOU is a forgery. She also denies ever receiving funds from Mr. Kirumira nor ever agreeing with him over operational funds for a business.
- [5] Before the commencement of the scheduling / hearing of this matter, Mr. Waiswa; learned Counsel for the 1st & 2nd Defendants raised two (2) preliminary objections by way of written submissions. In answer, Mr. Matovu; learned Counsel for the Plaintiff filed written submissions, to which Mr. Waiswa rejoined, and hence this Ruling.

Marahl am 16/12

<u>Submissions of Counsel on the Preliminary objections:</u>

- [6] Mr. Waiswa's objections are; <u>first</u> that Mr. Kirumira does not have *'locus standi* to institute the suit against the defendants, and <u>second</u>; that the amended plaint is illegal.
- [7] Mr. Waiswa argued that in the plaint Mr. Kirumira claimed to be in <u>'a business</u> partnership' with Ms. Birungi, and that he made assertions of a dispute over Partnership property, yet he did not sue in <u>the name of their business</u>. That as such, Mr. Kirumira offended the mandatory provisions of the Partnership Act¹ and of the Business Names Registration Act². That owing to that illegality, the suit ought to be dismissed.
- [8] He further argued that the amended plaint was filed without the leave of court and that as such, it offends **Order 6 rule 20 of the Civil Procedure Rules**. He also argued that the amendment is prejudicial as it changed the nature of the suit. That in the old plaint, Mr. Kirumira claimed that the suit property was business property, while in the amendment he claims it was personal property. That such an amendment ought to be struck out.

For his propositions Learned Counsel relied inter alia, on;

- i) Sections 4 (1) and 4 (2) of the Partnership Act & sections 4, 5 & 6 of the Business Names Registration Act.
- ii) Vantage Mezzanine FUND II Partnership v URSB & 4 Ors³

Masahhmm lefiz

¹ Act No. 2 of 2010

² Cap 109

³ M.C No. 205 of 2021 (Civ. Div.)

- iii) Regina Kavenya Mutuku & 3 Ors v United Insurance Co. Ltd⁴
- [9] In rebuttal, Mr. Matovu learned Counsel for the Plaintiff submitted;
 - that nowhere in the plaint does the Plaintiff mention 'a partnership business'. He argued that Mr. Waiswa cited the law and authorities out of context as they are inapplicable to the present case.
 - (b) that by a consent order vide Misc. Applic. No. 309 of 2021, leave was granted to Mr. Kirumira to amend his plaint.
- [10] By way of rejoinder, Mr. Waiswa argued that Mr. Kirumira cannot successfully plead that there exists 'a business partnership' and at the same time claim that the same is not governed by the law which requires a Firm name among other requirements. Counsel cited section 4 of the Business Names Registration Act.

Decision of Court:

[11] I will start with the 2nd objection which, from the outset, is erroneous. It is apparent that Mr. Waiswa did not bother to study the court file before raising that objection. Had he done so, he would have seen that there was an application by Mr. Kirumira vide M.A No. 309 of 2021 to amend his plaint to add the 3rd Defendant. He would have also seen that the said application was granted pursuant to a consent order. That objection is thus overruled.

Maandum lefiz

^{4 [2002] 1} KLR

- [12] I will now turn to the objection on *locus standi*. It is prudent that the term is 1st defined and understood.
- [13] Locus standi, which is also termed 'place of standing', is defined as;

'The right to bring an action or to be heard in a given forum'. See Black's Law Dictionary⁵

[14] In <u>Kithende Appolonia & 2 Ors v Eleanor Wismer</u>⁶, the Court of Appeal defined locus standi as;

'The right that one has to be heard in a court of law or other appropriate proceedings. Once one has a direct interest in the matter, then one is eligible to claim relief respecting that matter if that one's interest is being adversely affected'

(Underlining added).

- [15] The gist of the argument by Mr. Waiswa is; that the Plaintiff ought to have brought this suit in the name of the 'partnership business' pleaded in the plaint, and not in his individual name. While the gist of the argument in rebuttal by Mr. Matovu is; that there is no mention of a partnership business in the plaint.
- I have carefully read the plaint and the authorities relied on by Counsel. I find that in his plaint, Mr. Kirumira does not contend that there exists any <u>business</u> entity, or let alone, that there is <u>a business entity</u> in the form of a Partnership⁷. He also does not contend that the alleged <u>'business arrangement'</u> that he refers to in his plaint, was assigned <u>'a business name'</u>.

Masalulamm 16/12

^{5 9}th ed. at page 1026

⁶ CACA No. 34 of 2010

⁷ Refer to the definition of a Partnership under secs. 1, 2 & 3 (read together) of the Partnership Act, 2010

- [17] To this end, the alleged facts in the plaint are distinguishable from the facts in the **Vantage Mezzanine case (supra)** cited by Mr. Waiswa. In the latter case, unlike in the present case, the Applicant therein pleaded that it was a validly existing Partnership in South Africa.
- In the present case, no business name was assigned to the alleged business arrangement that is pleaded. I accordingly find, as correctly pointed out by Mr. Matovu, that sections 4 (1) & 4 (2) of the Partnership Act, and sections 2 (1) & (2), 4, 5 & 6 of the Business Names Registration Act, do not apply.

For clarity, the said sections require that any business carried on under <u>a business</u> <u>name'</u> should mandatorily be registered. In addition, those sections list exceptions to that requirement for registration, which exceptions apply to the alleged facts pleaded in this present case.

[19] Be that as it may, although Mr. Kirumira pleaded that he entered into 'a business arrangement' with Ms. Birungi, Ms. Birungi denies ever entering into such an arrangement. As it is, whether or not Mr. Kirumira carried on any business with Ms. Birungi, in whatever form, is a question of fact that has to be ascertained upon the hearing of this suit. A preliminary objection cannot therefore be raised in respect of this question, where the alleged facts have yet to be ascertained / proved. Preliminary objections raise pure questions of law which are argued on

pasalulam 16/12

the assumption that all the facts pleaded are correct. For this principle, see Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors⁸.

[20] Mr. Kirumira has brought this suit in his own name as a natural person. It is a cardinal rule of law that except in the case of a natural person, a non - existent entity cannot sue or be sued. The capacity to sue or be sued is conferred by law. For the above principle, see Paul Nyamarere vs. Uganda Electricity Board (in Liquidation) ⁹ Also see Kakooza Mutale vs Attorney General & Ors. ¹⁰

[21] Since no <u>business entity</u> has been pleaded, nor <u>any business name</u> prescribed to it, I hold that the objection raised is misplaced.

[22] By reason of the foregoing, I find no merit in both preliminary objections. I accordingly overrule them with costs that I award to the Plaintiff against the 1st & 2nd Defendants. The hearing of this suit shall commence, and is hereby fixed for scheduling on February 13, 2023 at 10am. By which date, the Joint Scheduling Memorandum and Joint Trial Bundle should be filed.

Markheld any 16/12

P. BASAZA - WASSWA

JUDGE

December 16, 2022

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

^{8 1969} EA at 696

⁹ HCMA No. 290 of 2007 reported in HCB [2008] at page 126

^{10 [2001 - 2005]} HCB 110