

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. NAKIRIJJJA JOYCE
3. MUWANGA JAMESDEFENDANTS

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

R U L I N G

[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:

- [1] 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

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(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.

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iii) **Regina Kavenya Mutuku & 3 Ors v United Insurance Co. Ltd⁴**

[9] In rebuttal, Mr. Matovu learned Counsel for the Plaintiff submitted;

(a) 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.

M. K. Waiswa 16/12

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 **Kithende Appolonia & 2 Ors v Eleanor Wismer**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.

[16] 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 business entity, or let alone, that there is a business entity in the form of a Partnership⁷. He also does not contend that the alleged 'business arrangement' that he refers to in his plaint, was assigned 'a business name'.

Masamba Waiswa 16/12

⁵ 9th 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

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 business entity has been pleaded, nor any business name 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.

M. Basaza Wasswa 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