

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

[LAND DIVISION]

CIVIL SUIT NO. 360 OF 2007

1. JAMES MUFUMBIRO

2. JOHN KINALWA

3. JOLEY NSUBUGA MUKASA

4. SARAH KADABADA & 47 ORS:.....PLAINTIFFS

VERSUS

UGANDA ELECTRICITY TRANSMISSION

COMPANY LIMITED:.....DEFENDANTS

BEFORE: HON. MR. JUSTICE HENRY I. KAWESA

According to the Plaintiff in the plaint filed on record, Plaintiffs are 52 persons represented by James Mufumbiro (P1), John Kyalwa (P2), Henry Muganwa (P3) Jolly Nsubuga Mukasa (P4) and Sarah Kadabadaba (P5). The Defendant is described as a limited Company incorporated under the Laws of Uganda.

Plaintiffs brought the suit severally against the Defendant seeking for a permanent injunction restraining and threatening to demolish the Plaintiff's residence and other properties, from legally evicting, harassing, intimidating or in any way in tempting the Plaintiff's ownership, occupation, use and enjoyment of their land;

developments thereon and or other properties comprised in Block 5 Triangle Zone Mulago 11 Parish Kawempe Division. Plaintiff prayed for general damages for trespass, costs of the suit and interest thereon.

Under Para 5 of the Plaint it is alleged that Plaintiff and 47 others were all bonafide occupants and legal owners, Plaintiffs built there on individual residences and have lived thereon for over 40 years without intemption. That Defendants have continuously issued threats to demolish and damage the Plaintiff's residences and other properties on the suit properties and evict them therefrom without following the land procedure in the Electricity Act, 1999. *Copies of the illegal notices in the print media dated April 3, 20015, April 27, 2006, April 23, 2007 and May 14, 2007 were attached as annexure 'AA'.*

It was pleaded that Plaintiffs jointly and or severally perpetually live in terror, fear and apprehension of being illegally deprived of their homes and livelihoods. The rest of the details of the pleadings are laid out in the plaint.

The Defendant filed a Written Statement of Defense in which it derived the claim. It particularly that the annexure notices 'AA' are not actionable and as such the Plaint discloses no cause of action against the Defendant; since in issuing the notices Defendant was carrying out its statutory duty. The Defendant points at the claim being misconcerned and premature it ought to have been logged with the Electricity Regulatory Authority.

Alternatively in Para 4, 5 and 6 the written statement of defense raises defenses specific to the Plaintiff denied issue raised on Written Statement of Defence. At the trial, no joint scheduling memorandum was filed; as each party filed their own memorandum and listed their own issues. These issues have been followed by them in their respective submissions.

For the purposes of putting this whole matter in perspective, it is the opinion of this Court that the preliminary point of law raised by the defense regarding the competency of this suit ought to be default with first. I noted that both Defendant and the Plaintiff addressed this point under different numberings of their issues as follows:

Issue 1:

Whether the plaint discloses a cause of action

The Defendants pleaded in the written statement of defense that the Plaintiff discloses no cause of action. In their submissions as this point, gave a background to the notices issued by Defendant and argued that in 2006 the Defendant a statutory company mandated to transmit electricity across the Country published the notices as a warning to all Ugandans in accordance with Section 87 of the Electricity Act.

Defendants also indicated that the notices were never specific to the Plaintiffs neither did they specify time for them to leave their premises but were of a general nature to the whole public, as pleaded in paragraph 4 (i) of the written statement of defence. The

defendant's Counsel argued that for all purposes the argument by Counsel is that Court is obliged to reject a plaint where it does not disclose a cause of action as stipulated under O.7 R 11 of the Civil Procedure Rules. He referred to *Auto Garage vs Motokov* (NO 3) (1971) EA 514 that there must be shown that;

- i) Plaintiff enjoyed a right.
- ii) The right was violated.
- iii) The violation was by the Defendant.

It was Counsel's argument that these ingredients did not come out because the Defendant was merely implementing its statutory role as a power transmitter and was merely implementing its statutory role as a power transmitter.

However, the Plaintiff in submission on cause of action argued that the essential ingredient above which support a cause of action were proved. He referred to evidence contained in PW1; Henry Mugwanya's evidence showing that they live in panic owing to the actions of the Defendants who may evict them anytime yet no compensation has been paid. He referred to evidences by PW3 - Salongo Saaka, PW4 Sewakiryanga Moses, PW5; Juliet Nabutosi, who all testified as to how the lives were put up, that the predecessors of the Defendant erected electricity lines over the land, without seeking and obtaining his consent (PW3); and (PW4).

Counsel argued that according to Sections 125 and 126 (1) (a) and (b), 126 (2) (1) (b) 126 4 and 5 of the Electricity Act 1999 vested the

Defendant Company issued all property rights and liabilities to which the Uganda Electricity Board was entitled and accordingly to Section 3 (1) (a) of the Government proceedings Act, the Defendant is liable to pay. Counsel further argued that PW1, PW3 PW4 and PW5 testified and led evidence of ownership of their respective Kibanja land and how that the Defendant's predecessor (UEB) without their consent and permission unlawfully entered onto their land/Kibanja and cut down the trees.

Banana plantation on their land/ Kibanja's and erected high voltage power lines in 1993 which lines are still present on the suit land. This evidence was not rebutted and or challenged by the Defense during cross examination or during defense. In the premises he urged that the issue be answered in the affirmative.

I have looked at the submissions and pleadings on record. The law requirement for proving if the plaintiff discloses a cause of action is that it is the plaintiff to be examined. It is not the evidence a plaintiff must of its own motion disclose a cause of action. The term cause of action refers to a set of facts or allegations that make up the grounds for filing a law suit without a cause of action a suit cannot arise.

This provision is centered in O.7 R 11 (a) Civil Procedure Rules where it is the law that a plaintiff may be rejected if it does not disclose a cause of action. The law as stated in *Kapeka Coffee Works Ltd versus NPART CACA NO. 3/2002* is that in determining whether a plaintiff and annexures if any and nowhere else.

This rule is critical to this case because as noted from the submissions of the Plaintiff, the justification for arguing that there is a cause of action was premised in evidence led through PW1, PW2, PW3, and PW4 and PW5, as he argues on page 3-4 of his submissions. No reference is made to the plaintiff.

The defence Counsel however alludes to the pleadings under Para 4 (1) of the Written statement of defence to make arguments in favour of a finding that there is no cause of action. This Court will therefore look only at the Plaintiff to determine this issue as per the law. Looking at Para 5 which gives the facts giving rise to the Plaintiff's cause of action and Para 4 giving the case are concluded as follows;

Para 4: "The Plaintiff's jointly and severally brings this action against Defendants seeking for a permanent injunction restraining the Defendant against illegally demolishing and threatening to demolish Plaintiff's residences..." 5(C) "Defendant has continuously issued threats to demolish and damages Plaintiff's residences and other properties on the suit properties and or evict them therefrom without following the laid down procedure in the Electricity Act 1999 Cap 145 Laws of Uganda. *Copies of illegal notices in the print media dated April 3, 2005, April 27, 2006, April 23, 2007 & May 14, 2007 are attached and marked collectively as "AA".*

Looking at the annexure "AA" the first annexure "AA" is a public notice, and is general. Name of the Plaintiff or properties, residences are listed thereon. The next Annexure "AA" is a newspaper clip reporting that UETCL has warned people who have constructed or are

conducting activities under or within a radius of 15 meters on either side of a (66 -132 KV) high voltage power have to remove the structures within 60 days. Again it does not mention any property, residence or name of any of the Plaintiffs to the next annexure "AA" is another general public notice. It does not mention any of the Plaintiff's residences or properties as alleged in Para 5 of the Plaint.

It is clear that the Plaint is fazed on the served notices. There should be one question what right did the Plaintiff's enjoy with the Defendants. The plaintiffs shows and describes the Defendant in Para 3 as a limited Company incorporated by the laws of Uganda. The Defendant's submissions however show that Defendant is a statutory company mandated to transmit electricity across the country.

It has a mandate to warn the public of the dangers carried by its high voltage transmission wires and there issued notices for the purpose. The notices described clarified that any activity whatsoever under or within 15 meters from the Centre if it's existing high power line is prohibited under Section 87 of the Electricity Act. Therefore in publishing a public notice, and Plaintiff suing on the basis of that notice, the Plaint does not disclose what right the Plaintiff was enjoying *viza vie* the Defendants who have a corporate mandate was to protect the Plaintiff's life and save it from dangers of such high voltage wires.

The same question is posed. If there was no right, then there was no right violated by the Defendant. Reading the plaint under Para 4, it is clear that the said actions are not linked with Defendant's overt

action of “illegal evicting, harassing, intimidating, intempting Plaintiff’s ownership use etc. of the property.

The Defendant was merely informing the general public of its intentions to protect them and the warning was them to avoid breaking the law by carrying out activities within 15 meters from the Centre of any existing high voltage power line. Name of the Plaintiff was specifically mentioned in there notices or any of their parties infringed upon. This was a mere awareness. I agree with the defence that on the authority of the requirements of O.7 R 111(a) of the Civil Procedure Rules, the case *Auto Garage versus Motokov (No. 3) 1971 EA 514 and Kapeka Coffee Works Ltd vs NPRAT (CACA) No. 3 2002*, this plaint falls short of disclosing a cause of action against the Defendant.

The law is that if a plaint doesn’t disclose a cause of action then it’s mandatory to have it rejected. See, Nakiryowa *& Another vs Serugo & Anor 2018 UG HCLD 50 (Viii)*. Also, the Indian Courts have held so in *Selina Sheehan versus Hafez Mohammad, Fatch Nashit* that such a plaint should be rejected.

In the result, this issue terminates all of the others. This plant disclosing no cause of action is rejected struck down with costs to Defendants

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Henry I. Kawesa
JUDGE
18/02/2022

Appearances

18/02/2022:

Lwasa Steven for the Plaintiff.

3rd Plaintiff present.

Sewakiryanga present.

James Kibimbo present

No representative from the Defendants.

Court:

Judgment delivered in presence of the above parties.

Later appearing:

Kenono Aruho for the Defendant present.

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Henry I. Kawesa

JUDGE

18/02/2022