

MWESIGE RICHARD :::::::::::::::::::::::::::::::::::::: PLAINTIFF

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2. ROBINA KAGOORO

BEFORE: HON. JUSTICE VINCENT WAGONA

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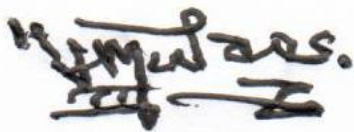
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That in December 2019, the 1st defendant allegedly through the 1st defendant purportedly sold the plaintiff's land to the 2nd defendant without the plaintiff's knowledge. That upon the 1st defendant selling the suit land to the 2nd defendant, the plaintiff lodged a caveat on the suit land which comprised in Block 64, Plot 37
5 at Butebe Ward, North Division, Fort Portal City. That the plaintiff was reliably informed that a group of people were fencing his land whereby he sent the Chairperson L.C.I to inquire from them why they were fencing off the plaintiff's land and they replied to him that they were acting under orders of their engineer and not the Chairperson L.C.I but later the plaintiff learnt from police that the 3rd
10 defendant had instructed them to fence his land.

The plaintiff also contended that the 2nd and 3rd defendants have since 2019 been harvesting his bunches of *matooke* in which he shall pray for special damages.

15 In response the 3rd defendant denied the allegations by the plaintiff and averred that he has never trespassed on the suit land and was never a party to the transaction for sale of the suit land. It was averred that the suit land belong to the 2nd defendant having lawfully purchased the same from the administrator of the estate of the late Leo Bafabusa. That the 2nd defendant was in possession of the suit land and she
20 was not fraudulent. That the 3rd defendant is a wrong party to the suit as such the plaintiff has no cause of action against him. It is against this background that the 3rd defendant raised the point of law at hand.

Representation and hearing:

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Mr. WahindaEnock of M/s Ahabwe James & Co. Advocates appeared for the 3rd defendant while Mr. Sande Ben Duncan of M/s Onyango & Co. Advocates appeared for the plaintiff. Both parties proceeded by way of written submissions which I have considered in this ruling.

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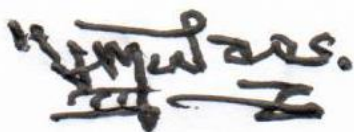
Submissions of the 3rd Defendant:

Mr. Wahinda for the 3rd defendant contended that the plaintiff has no cause of action against the 3rd defendant. Counsel invited me to the case of *Auto-garage V. Motokov (1971) E.A 514* where it was held that a plaintiff is said to have a cause
10 of action if he or she shows that he enjoyed a right, that the right was violated and the defendant is liable for the violation of the right. That a cause of action can only be ascertained by looking at the pleadings and annexures thereto as it was held in *Kapeka Coffee Works Ltd Vs. Non Performing Assets Recovery Trust CACA No. 1 of 2000*.

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Learned counsel contended that looking at the plaint, the plaintiff in para 4 sought an order that the 1st and 3rd defendants fraudulently sold the suit land to the 2nd defendant. That in paragraph 5 (d) the plaintiff claims that the 1st defendant sold the suit land through the 3rd defendant. That on the sale agreement attached as
20 annexure B, to the 2nd and 3rd defendant written statement of defense, the seller indicated therein is Kazoba Peter (the 1st defendant) and the purchaser was Robina Kagoro (2nd defendant) and the 3rd defendant is a mere witness.

Learned counsel contended that the 3rd defendant is a mere witness and does not
25 claim ownership of the suit land and as such the plaintiff has no cause of action



against him. That since the 3rd defendant is a mere witness, he did not deprive the plaintiff of any right in the suit land and such he is a wrong party to a suit. Learned counsel thus asked court to uphold the point of law and strike off the 3rd defendant from the plaint with costs.

5 **Submissions of the Plaintiff:**

In response Mr. Sande for the plaintiff agreed with the 3rd defendant's counsel definition of a cause of action and the decision cited. He argued that the authorities cited by Mr. Wahinda were wrongly applied to the facts of the case as discernable from the plaint and the annexures thereto. Learned counsel contended that the
10 plaintiff's claim as stated in para 4 of the plaint is in fraud and trespass to land and sought orders among other, a declaration that the 1st and 3rd defendants sold the suit land illegally to the 2nd defendant.

That under paragraph 5 (f), the plaintiff pleaded that he learnt from police that the
15 3rd defendant had instructed a group who were unlawfully fencing off his land. That further under paragraph 6, the plaintiff also pleaded that the 2nd defendant and the 3rd defendant have since 2019 been harvesting his bunches of matooke for which he shall pray for damages. That further under paragraph 7, the plaintiff contended that he suffered psychologically and physically since his rights were
20 infringed by the defendants.

Mr. Sande maintained that the plaintiff claimed the 3rd defendant was harvesting his bananas on the suit land. That if a separate suit was brought, such issues would arise. Learned counsel also argued that in the criminal case that is CRB 159/2022
25 (Uganda Vs. Bemanyisa Robert Alias Obama and Mwesige Richard it is alleged

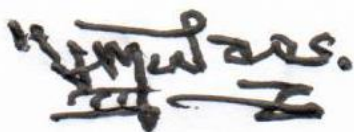
that the accused persons entered into the land in possession of Kaganda Bob and maliciously destroyed concrete poles the property of Kaganda Bob. It was pointed out that this is captured under paragraph 5 (f) of the plaint. Counsel submitted that under order 1 rule 3 of the Civil Procedure Rules, a party can be joined as a defendant against whom any right to relief in respect of or arising out of the same transaction or a series of acts or transaction.

That under the spirit in order 1 rule 3, the 3rd defendant should be maintained as a party since his claim for special and general damages would lay against him for the harvested bananas and the suffering the plaintiff has been subjected to. Learned counsel also cited the case of *M/s Emaus Foundation Ltd &ors Vs. Emau Foundation Investments (u) Limited and Anor, M.A 615 OF 2019* where it was observed that a party has a right to sue a party whoever he chooses. That the plaintiff contended that the 3rd defendant harvested his bananas and unlawfully, as such the plaintiff has a cause of action against him. He invited me to disregard the point of law and disallow the point of law.

Consideration by Court:

A cause of action connotes every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgement of the court. It does not comprise every piece of evidence which is necessary to prove each fact, but every fact which is necessary to be proved. (*See Gladys Nduku Nthuki Vs. Letshego Kenya & Anor, Kenya High Court Civil Suit No. 007 of 2021*).

Therefore, for one to satisfy court that he or she has a cause of action, he or she must plead facts in the plaint which if proved would entitle him to judgment in



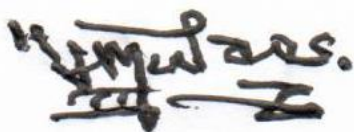
respect of the claim in the plaint. The plaintiff must prove that he enjoyed a right which is protected by statute, common law or equity, that that right was violated and that the defendant is responsible for such violation to entitle him to the reliefs sought. (*See (Tororo Cement Co. Ltd vs Frokina International Ltd SCCA No. 2 of 2001)*).

In ascertaining whether a plaint discloses a cause of action or not, court should limit its self to the plaint and the annexures thereto and nothing more or nothing less. (*See Kebirungi vs. Road Trainers ltd & 2 others [2008] HCB 72*). This is because a party's claim against the defendant must be disclosed in the plaint and not any other subsequent pleadings. A party for instance cannot claim that the cause of action is well pleaded in the reply to the written statement of defense since a reply is not a pleading that commences an action in law.

In *Yaya Towers Limited vs. Trade Bank Limited (In Liquidation) Civil Appeal No. 35 of 2000* court expressed itself thus:

“No suit should be summarily dismissed unless it appears so hopeless that it is plainly and obviously discloses no reasonable cause of action and is so weak as to be beyond redemption and incurable by amendment.”

Therefore, where a cause of action is remote from the pleadings but can be clearly brought out through an amendment, then court should be hesitant to strike out the same. However, where it appears from the pleadings that the plaint discloses no reasonable cause of action in law or where the claim disclosed is so weak to be redeemed by an amendment, then court must strike out the suit for non-disclosure of a cause of action against a specific party.

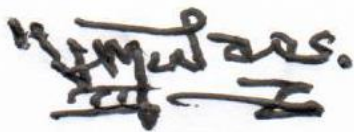


In the case before me, the plaintiff's claim against the defendants is pleaded under paragraph 4 of the plaint where he stated thus; *"The plaintiff brings this claim against the defendants jointly and severally for fraud and trespass to land..."*

5 Therefore, the plaintiff's claim against the defendants was in two separate claims, the first one being fraud and the second one in trespass to land. In the particulars of the claim as against the 3rd defendant, the plaintiff sought reliefs inter-alia, *a declaration that the 1st and 3rd defendants fraudulently sold the suit land to the 2nd defendant and an order of permanent injunction to issues against the defendants*
10 *restraining their agents, assignees or workmen from interfering with the plaintiff's possession and enjoyment of the suit land.*

The plaintiff went ahead under paragraph 5 (a), (b) and (c) to state the background of how he acquired the suit land and under paragraph 5 (f) he indicated that he
15 learnt from police that it was the 3rd defendant that had instructed the people who were unlawfully fencing off his land. The plaintiff further pleaded under paragraph 6 that the 2nd and 3rd defendants have since 2019 been harvesting his bunches of matooke to which he prayed for special damages.

20 The plaintiff attached a charge sheet in a criminal case at Fort Portal North Police Station where he was jointly charged with a one Bamanyisa Robert alias Obama for criminal trespass on land in possession of the Kaganda Bob and the plaintiff alleges that it is the same land in dispute.

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The plaintiff further contended that the 2nd and 3rd defendant had since 2019 been harvesting his matoke on the suit land and thus sought to recover special damages and this fact was denied by the 3rd defendant.

- 5 I believe the facts of trespass to land claimed to belong to the plaintiff and the illegal harvest of the banana plantation thereon by the 3rd defendant as presented by the plaintiff if such facts are proved in evidence, the plaintiff would be entitled to a judgement against the 3rd defendant. I therefore agree with Mr.Sande for the plaintiff that the plaintiff has a cause of action against the 3rd defendant.

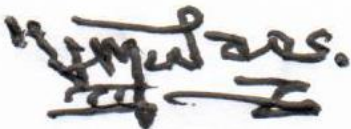
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In conclusion, I find that the plaintiff's claim discloses a cause of action against the 3rd defendant and the weakness in the pleadings are curable by amendment. I therefore find that the point of law raised on behalf of the 3rd defendant has no merit and it is overruled with costs in the cause.

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It is so ordered.

Dated at High Court Fort-portal this 8th day of June 2023.



Vincent Wagana

20 **High Court Judge / FORT-PORTAL**

