

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT FORT PORTAL
CIVIL MISC. APPLICATION NO. 19 OF 2023
(ARISING FROM CIVIL SUIT NO. 038 OF 2022)

- 5 **1. BASHAIJA FRANCIS**
 2. CHRITMAS ENOCK
 3. MUSINGUZI HERBERT
 4. MUGUME TALANTINO
 5. KAHANGIRWE JULIUS
10 **6. KIHKA GODFREY**
 7. KEBIRUNGI EFRANCE KABATANGARE V
 8. KEBARAZA CHRISTINE
 9. RUBASIMBIRA JOHN
 10. MERAB KOMUHENDA
15 **11. KEBIRUNGI EDITH MEDRID**
 12. TINKAMANYIRE SILVER
 13. MWAMBUSYA JOHN ::::::::::::::::::::::::::::::::::::::: APPLICANT

VERSUS

THE REGISTERED TRUSTEES OF CATHOLIC
20 **DIOCESE OF FORT PORTAL ::::::::::::::::::::::::::::::::::::::: RESPONDENT**

BEFORE: HON JUSTICE VINCENT WAGONA
RULING

Introduction:

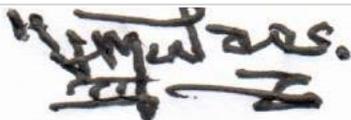
The applicant brought this application under Article 1 (1) (2), 2 (1), 29 (1), 50 (1) (2) of the Constitution, Section 33 of the Judicature Act, Order 6 rule 28, 29, & 30, Order 7 rule 14 & 15, Order 51 rules 2,3 of the Civil Procedure Rules for orders that:

- 5 **1. The Respondent's Land Suit No. 038 of 2022 discloses no cause of action against the Applicant.**
- 2. An order that the Respondent's Land Suit No. 0038 of 2022 is a violation of the Applicant's freedom of Association as Kitagwenda Family Helper Project.**
- 10 **3. An order of dismissal of the Respondent's Land Suit No. 38 of 2022.**
- 4. An order for exemplary and general damages.**
- 5. Costs of the suit and any other reliefs to stop the Respondent and its agents from abusing the court process.**

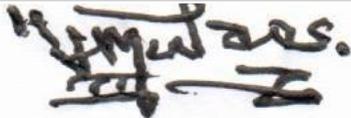
15 **Grounds of the application:**

The application was supported by two affidavits of Bashaija Francis and Rubasimbira John who averred as follows:

- 20 1. That Bashaija Francis is a member and the current chairperson executive committee of Kitagwenda Family Helper Project (the Project) and he assumed office in 2009 but minutes and resolutions were missing after the office of the organization was broken into. That Rubasimbira John is also a member and the current superintendent and he assumed office in December 2019.

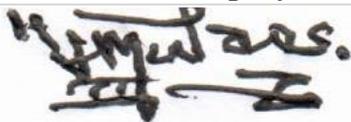
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2. That one of the prime suspects of the break-in was Rev Fr. Kayondo Francis Xavier the Parish Priest of Holy Trinity Catholic Parish Kitagwenda.
3. That Kitagwenda Family Helper Project is an independent organization operating in Kitagwenda District offering interventions in health, education and improving the incomes of the local community. That the organization was started in 1984 and it was affiliated to an international non profitable organization called Christian Children Fund (CCF) from the United States of America.
4. That the land on which the organization runs its projects was purchased through membership contributions. That the project and all the programs are run on the land purchased by the organization which the Respondent wants to grab.
5. That in 1990, the members of the organization vacated the one and half acres of land that had been donated to them by the Respondent and a building constructed thereto and shifted to its own land where it has been running its projects without any interference until when Rev. Fr. Kayondo Xavier begun claiming ownership of the organization.
6. That currently the organization has more than 462 members who signed an amended constitution and the Respondent had never been a member. That the Respondent at one time sued the applicant in Kamwenge Chief Magistrate's Court but did not attach documents of ownership of the suit land a move which was protested by the Applicant' lawyer.
7. That by the Respondent claiming ownership of the organization, it is denying the Applicants an opportunity to come together as a community to continue helping the community in orderto promote health, education in the area and improve the Applicants' household income. That Mr. Bashaija is a

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direct beneficiary of the organization since it helped him study as he was from a poor family. That from the time Bashaija's parents enrolled him into the organization he had never seen the Respondent participate in the management and running of the organization.

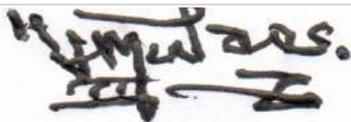
- 5 8. That the Respondent is using court to deprive the Applicants of their right to associate and block opportunities for the community. That when the Respondent started interfering with the management of the organization, a report was made at police. That the Applicants have spent a lot on money on defending themselves.
- 10 9. That the organization has independent sources of funding for its projects including Christina Children Fund. That from the time Rubasimbira John joined the organization as a social worker, the Respondent has never funded, participated in any activities of the organization including the general assembly or determining policies for the organization.
- 15 10. That John and all staff of the organization have never been employees of the Respondent. That since he joined the organization, he had never received any complaint about its activities till 2010 when Rev. Kayondo Xavier, the Parish Priest of Holy Trinity Catholic Parish, Kitagwenda started claiming the same.
- 20 11. That the organization was affiliated to Christina Children Fund and all its administrative structures and policy guidelines were published by CCF and the parish priest could not own it. That the program of buying land was disclosed in the meeting of 25th September 1984 and the establishment of the current dispensary was discussed in the same meeting and the Respondent
25 does not own the same. The Applicant thus asked court to allow the application and the prayers sought.

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Reply for the Respondent:

The application was opposed by the Respondent through the affidavit of Rev. Fr. Kayondo Francis Xavier authorized by a power of attorney dated 11th May 2021
5 attached to his affidavit and he contended as follows:

1. That the application is frivolous and a point of law was to be raised to that effect when the application comes up for hearing. That he never broke into the offices of Kitagwenda Family Helper Project as alleged by the Applicants. That when the criminal file was submitted to the relevant
10 authorities, they found no evidence incriminating him.
2. That the organization is not independent of the Catholic Church as can be seen from the letters of John Rubasimbira to the Diocesan medical Coordinator, Catholic Diocese of Fort Portal and Sr. Mother General, Baryatereza Sisters.
- 15 3. That the organization has been at all material times a project of the catholic church as further seen from correspondences made long ago in 1990. That the land it operates on was bought in addition to church land where the project started using church money/collections.
4. That the organization is not a body corporate and its registration as a
20 community based organization on 7th June 2022 was done behind the back of the church after a dispute arose with the Applicants that led to the filing of the case in Kamwenge.
5. That it is not true that the organization shifted from its land because the land on which they operate is land purchased using church funds thus why Rev.



Robert Hesse one of the Priests of Holy Trinity Parish Kitagwenda at the time was asked to endorse on the agreements as the parish priest.

6. That the Respondent does not need to be a member of the organization since it was started by the church. That the suit is Kamwenge was struck out before evidence could be presented and a list of documents to be relied up
5 was attached to the pleadings.

7. That the Respondent has a right to protect its projects and property and the land on which the projects were and thus it is not true that the Respondent wants to grab the same. That it is not true that the plaint discloses no cause
10 of action against the Applicant. That the plaint is proper before court and it discloses a cause of action against the Applicant.

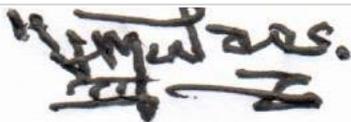
Rejoinder for the Applicant:

15 In rejoinder Mr Rubasimbira John averred as follows:

1. That the Respondent's affidavit in reply in full of lies. That the organization is an independent membership organization founded in 1984 running its projects in health, education and economic development. That at one time the church donated land to the organization which was vacated.

20 2. That the first constitution of the organization was in 1986 and was amended in 1997, 2010 and the latest amendment was in 2022. That the first constitution of the organization and other documents got misplaced after the Respondent's agents broke into their office.

25 3. That the Respondent is a stranger and has no interests in the suit land and has no influence or control over the activities of the organization. That Rev.

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Fr. Kayondo has no locus to swear the affidavit in reply as such the same should be struckout with costs.

Issues:

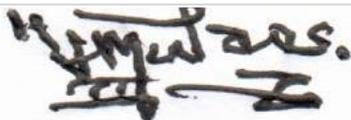
- 5 **(1) Whether the Land Civil Suit No. 0038 of 2022 abated.**
 (2) Whether the Respondent’s affidavit in reply is incompetent and liable to be struckout.
 (3) Whether the Respondent’s plaint in Land Suit No. 0038 of 2022 discloses a cause of action against the Applicant.
10 **(4) Whether or not the Respondent infringed on any right of the Applicant.**
 (5) Remedies available

Representation and Hearing:

15 *Mr. Musiimenta Stuart of M/s Tumwebaze, Kasirye & Co. Advocates* appeared for the Applicant while *Counsel Ngaruye Ruhindi of M/s Ngaruye-Ruhindi Spencer & Co. Advocates* appeared for the Respondent. Both counsel addressed me by way of written submissions which I have considered in this ruling.

20 **RESOLUTION:**

- 1. Whether the Land Civil Suit No. 0038 of 2022 abated.**

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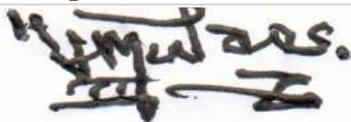
Learned counsel for the applicant contended that the plaintiff's suit abated on 29th September 2022. That contrary to Order XIA rule 6 of the Civil Procedure (Amendment) Rules 2019, the plaintiff failed to take out summons for directions within 28 days from 1st November 20022 the date of the last reply. He thus asked
5 court find that the suit abated and be pleased to strike out the same with costs.

In response, Mr. Ruhindi for the Respondent submitted that summons were taken out in time. That the Respondent's advocate took summons and wrote a letter asking for the same to be fixed for hearing which has not been done by the
10 Registrar of Court. That as such the point of law at hand has no merit as such the same should be overruled.

Consideration by court:

15 Under *Order XIA rule 6 of the Civil Procedure (Amendment) Rules 2019*, summons for directions must be taken out within 28 days from the date of the last reply or rejoinder. However, courts have interpreted the said order and held that the failure to take out summons for directions does not automatically abate suit.

20 In this case the plaintiff wrote a letter dated 7th November 2022 and enclosed summons for directions. The same letter was received by court on 8th November 2022 together with copies of the summons for directions which were never fixed by the Registrar. I therefore find that there was compliance with Order XIA rule 6 of the Civil Procedure Rules since the summons were taken out after 7 days from
25 the date of last reply being a reply to the written stamen of defense by the plaintiff. Therefore, this point of law has no merit and the same is overruled.

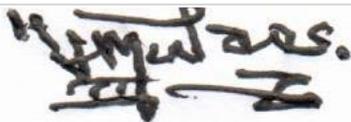
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2. Whether the Respondent's affidavit in reply is incompetent and liable to be struck out.

Learned counsel for the applicant contended that powers of attorney under which
5 Rev. Fr Kayondo Francis Xavier deponed the affidavit on behalf of the Respondent
was issued only to give him limited powers to represent the plaintiff in the Chief
Magistrate's Court at Kamwenge against the nine people therein which lapsed.
That the current application involving 22 people was not envisaged in the power of
attorney attached to the affidavit in reply. Learned counsel cited the case of
10 *Fredrick Zaabwe Vs. Orient Bank & others, SCCA No. 4 of 2006* where it was
held that powers of attorney must be strictly construed and the authority given by
the powers of attorney which is within the four corners of the instrument. Learned
counsel contended that there is no instrument or resolution from the alleged
Registered Trustees of Catholic Diocese of Fort Portal identifying Rev. Fr. Robert
15 K. Muhirwa as one of the alleged Trustees or authorized persons to grant powers of
attorney to any person on behalf of the Respondent. That what is attached is a mere
National Identity Card which does not speak of the capacity under which he signed
on behalf of the diocese.

20 In response Mr. Bonifance Ruhindi for the Respondent made submissions whose
gist was that Rev. Fr. Kayondo Xavier is the only priest at Holy Trinity
Kitagwenda Catholic Parish where the land is located and was authorized to make
appearance and do everything required in this case. That the powers attorney were
not confined to the case before the Chief Magistrate's Court at Kamwenge.

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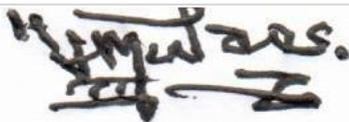
Consideration by Court:

The power of attorney granted to Fr. Kayondo was structured as follows:

- 5 1. *For and on behalf of the said Registered Trustees to make appearance in court in a suit, applications and appeals and other proceedings arising therefrom that shall be filed against Rubasimbira John, Bashaija Francis, Christmas Enock, Merab Komuhendo, Kebirungi Edith Medrid, Tinkamanyire Silver, Mwambusya John, Tugume Nicolas, and Kiiza Nickson by the Registered Trustees of the Catholic Diocese of Fort Portal.*
- 10 2. *For and on behalf of the said Registered Trustees to appear in court and prosecute the above named case and to prosecute and defend any applications, appeal and any other proceedings arising therefrom.*
- 15 3. *For an on behalf of the said Registered Trustees to perform all other duties and functions and do all other activities and functions and to do all acts that are necessary in prosecuting and/ or defending any other case, applications or proceedings that may arise therefrom the above case.*

In my view the powers of attorney are general and permitted Rev. Fr. Kayondo to depone an affidavit on any other case. In my view the clear intention from the powers were to authorize the prosecution of a case against the parties named in the powers and any other case. The powers did not limit the authorization to filing a
20 suit in the Chief Magistrate' Court.

Secondly the powers were signed by Rt Rev. Robert K. Muhirwa who signed as the Bishop Ordinary, Fort Portal Diocese and the Chairman Board of Trustees. The
25 capacity under which Rt Rev. Robert Muhirwa signed the powers of attorney is



clearly named therein. I therefore find no merit in this point of law and it is overruled.

**3. Whether the Respondent’s plaint in Land Suit No. 0038 of 2022
discloses a cause of action against the Applicant.**

Learned counsel for the applicant pointed out that for court to ascertain whether a party has a cause of action, the plaintiff must prove that he enjoyed a right, that the right was violated and the defendant is liable (*Auto Garaga & Anor Vs Motokov (No. 3) (1971) E.A 514*) and submitted that the organization is operating on its land and as such the plaintiff has no cause of action. Learned counsel further contended that the plaintiff did not prove that it was a registered trustee as provided under the provisions of the Trustees Incorporation Act and thus, the Respondent’s suit was defective for want of locus to file it. Learned counsel also argued that it was fundamentally defective for the plaintiff to file a suit against the Applicant in the capacity as “trading as Kitagwenda Family Helper Project” yet Kitagwenda Family Helper Project is an independent organization. Counsel further contended that under Order 1 rule 8(1), the plaintiff ought to have secured a representative order to sue through 22 of the Applicants out of the many who are members of the organization. That as such the suit was incompetent on that account.

In response counsel for the Respondent maintained that the plaint by the Respondent raises a cause. He prayed that the same is overruled.

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 **GladyNdukuNthuki Vs. Letshego Kenya & Anor, Kenya High Court Civil Suit No. 007 of 2021**).

In **Tororo Cement Co. Ltd vs Frokina International Ltd SCCA No. 2 of 2001** the Supreme Court guided that the plaintiff must plead facts in the plaint which if proved would entitle him to judgment in respect of the claim in the plaint. That the plaintiff must prove that he or she 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 **(Auto Garage & Anor Vs. Motokov (No. 3)) 1971) E.A 514**).

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**).

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.”*

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

The Respondent pleaded in the plaint for a declaration that, (a) *Kitagwenda Family Helper Project is not an independent organization but a project that was started by the Catholic Church and under the Catholic church, A declaration that land on which the project is operating belongs to the Catholic Church, An order of vacant possession against the defendants/Applicant, a declaration that the defendant usurped the management of the project without authority from the plaintiffs and that they are trespassers, a permanent injunction, general damages and interests on general damages and costs of the suit.*

The plaintiff contended that in 1980, the Church entrusted its parish of Holy Trinity Catholic Parish, Kitagwenda under its priest Robert Hasee to purchase land for the church and for establishment of a project called Christina Child Fund (currently known as Kitagwenda Family Helper Project) which had been instructed under Kitagwenda Parish by the said Rev Robert. That the said Rev. Robert bought land from Bikumbwenda Mitusera, Murindwa, Salomgo and Lawrence Bagarukayo. That the said Rev Robert appointed some of the defendants to run the project as its leaders. That upon purchase of land, Rev Robert put permanent structures on the land. That in June 2020, the 1st to the 16th defendant without any color of right sold part of the plaintiff's land. That later in January to April 2021, the 1st to the 20th defendants organized several meetings intended to

hijack the project from the church which was resisted by the plaintiff. That the defendants have continued with their illegal acts of trespass on church land despite several warning from the church and authorities. The plaintiff thus filed the suit to stop their illegal acts and sought the orders highlighted above.

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It is the case of the respondent that the land and the project claimed by the applicants belong to the church and that the applicants are trespassers on the land and have usurped the management of the project. The respondent thus claims that they enjoyed a right of ownership over the land and authority over the project that has been violated by illegal acts of the applicants for which they are entitled to the reliefs sought. It is therefore my view and finding that the plaint discloses a cause of action against the applicants.

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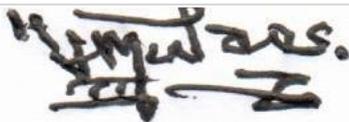
4. Whether or not the Respondent infringed on any right of the Applicant.

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Learned counsel for the Applicant contended that under section 8 (1) of the Human Rights Enforcement Act 2019, court is mandated to determine human rights issues in the course of proceedings. That Kitagwenda Family Helper Project is a Community Based Organization and under the NGO Act, it is an independent organization. It was contended that the suit by the Respondent infringed on their freedom of association under an organization which is independent. In response counsel for the Respondent argued that the suit is about ownership of land and the organization and it did not trump on the freedoms of association of the Applicant.

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25 Consideration by Court:



Section 8 (1) of the Human Rights (Enforcement) Act, 2019 provides that:
“Where, in any proceeding in the High Court, a question arises as to the violation of a fundamental right or freedom, the presiding judge shall immediately stay the proceedings and determine the question raised.”

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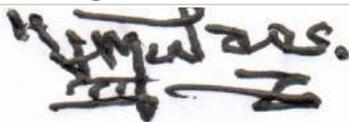
The above provision enjoins the High Court in the course of proceedings, to suspend proceedings and first determine questions of violation of human rights that may arise during the course of proceedings.

10 Article 29 (e) of the 1995 Constitution provides for the freedoms of association as a right and it provides thus: *“Every person shall have the right to freedom of association which shall include the freedom to form and join associations or unions, including trade unions and political and other civic organizations.”*

15 Freedom of association is not an absolute right. The enjoyment of the same should be within the provisions of the Constitution and other applicable laws. That is, the right should be exercised within the limitations provided for under the Constitution. **(See Muwanga Kivumbi Vs. Attorney General, Constitutional Petition No. 9 of 2005).**

20

In my opinion, a fundamental right or freedom cannot be allowed to be enjoyed through the infringement of other rights that are equally protected by the Constitution such as the right to own property claimed by the respondent as having been infringed upon by the applicants. The Respondent contends that Kitagwenda
25 Family Helper Project is an initiative of the Church, that the Applicants illegally usurped the management thereof and that the applicants have also trespassed on the



project land belonging to the church. Therefore, the applicant cannot invoke a right to freedom of association to divert court from inquiring into the dispute. I find no merit in this contention by the applicant and it fails.

5 In the result, this application is hereby dismissed with costs awarded to the Respondent.

I so order.



10

Vincent Wagona
High Court Judge
FORT-PORTAL

15 **DATE: 31/8/23**

