

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**LAND DIVISION**  
**CIVIL SUIT NO. 213 OF 2021**

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**SENGENDO CHARLES.....PLAINTIFF**

**VERSUS**

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1. **GEORGE WILLIAM KIBUMBWA**  
2. **KASULE EDMOND SEKITTO**  
3. **NALONGO HARRIET NAMUDDU KIBUUKA.....DEFENDANTS**

**Before: Lady Justice Alexandra Nkonge Rugadya**

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**RULING ON PRELIMINARY OBJECTION:**

20 The 2<sup>nd</sup> and 3<sup>rd</sup> defendants in this suit raised a preliminary objection regarding the competency of this suit. The gist of their argument was that the plaintiffs lacks the *locus standi* to institute these proceedings and as such the entire proceedings are a nullity.

As directed by this court the learned counsel for the two defendants filed on ECCMIS written submissions which the plaintiff however did not make any response to.



**Brief background:**

By way of a brief background to the suit, the plaintiff is a holder of powers of attorney granted to him in 2010 by Rev. Father Kaweesa Ponsiano. He instituted this action against the defendants not in the donor's names but in  
5 his own names as the plaintiff.

In *paragraph 4 (a)* of the plaint, he seeks among other orders, a declaration that he is a lawful owner of the suit land. The cause of action as pleaded by him in the plaint arose as hereunder:

That on the 13<sup>th</sup> day of May, 2004, the plaintiff purchased *kibanja* of land  
10 located at Gitta Kasangati from a one Hajati Mariam Nabukeera, vide a sale agreement dated 13<sup>th</sup> day of May, 2004. The land measures approximately 1.34 Acres. A *copy of the said sale agreement in Luganda and its English Translation were attached, and marked respectively as **Annextures "A and B"**.*

On the 12<sup>th</sup> day of June, 2004, the plaintiff agreed with the land lord Mr.  
15 George William Kibumbwa (the 1<sup>st</sup> defendant) to purchase his mailo interest at a cost of **Ugx 900,000/-** (nine hundred thousand shillings).

That out of the said consideration, the plaintiff paid off **Ugx 300,000/-** (three hundred thousand shillings only) and the balance of **Ugx 600,000/-** was agreed to be paid to the land lord after he had processed the land title for the  
20 said land. *(a copy of the said land sale agreement in Luganda and the English translation is herewith attached and marked respectively **annexture "C" and D"**).*

That immediately after the said purchase and partial payment to the land lord, the plaintiff took quiet possession of the said land where upon he constructed a  
25 home, planted a matooke plantation, with coffee and other plants and trees.

However, that sometime in 2009, his peaceful possession was interrupted by a one Kasule Edmond Sekitto the 2<sup>nd</sup> defendant, when he (Kasule) started





claiming that he had purchased the said *kibanja* from Hajati Mariam Nabukeera.

The plaintiff took the matter to the local authorities from where the said Hajati Mariam Nabukeera clarified on the matter that she never sold the said *kibanja* to the 2<sup>nd</sup> defendant.

He then filed a civil suit against Hajati Mariam Nabukeera in Kasangati Magistrate Court vide **Civil Suit No. 77 of 2009**. The suit was resolved under a consent judgment whereupon the parties agreed that the said *kibanja* belonged to Nabukeera and that she had sold the same to the plaintiff. He referred to a copy of the consent judgment and its decree marked as **annexture "E and "F"** respectively, which he however did not attach.

Furthermore, that in 2010, the 2<sup>nd</sup> defendant filed a suit in Nakawa High Court vide **Revision Cause NO. 005 of 2010** which he abandoned and that to date the 2<sup>nd</sup> defendant has never returned to the plaintiff in regard to that matter.

That on the 24<sup>th</sup> day of February, 2012, the 3<sup>rd</sup> defendant attempted to plant fencing poles around the suit land and destroyed the plaintiff's banana and coffee plants purporting to have purchased the same from the 2<sup>nd</sup> defendant, which prompted the plaintiff to report the matter to the Police as per vide *police reference DSREF48/24/02/2021* where she faces charges of malicious damage to property and criminal trespass on land which the plaintiff claims he has been in actual and uninterrupted possession of. He claimed that the defendants are a group of syndicated fraudsters who have orchestrated a plan of defeating the plaintiff's quiet possession of his land.

It was the defendants' contention in the objection they raised that the plaintiff was only a holder of powers of attorney and had no interest in the suit land and should not have instituted the action against in his names and has no cause of action against them. Accordingly, this suit was grossly misconceived.



**Consideration of the objection:**

In their submissions, the defendants claimed that the plaintiff was a total stranger to the alleged land transaction which involved the donor of the powers and the 3<sup>rd</sup> defendant.

- 5 It is the settled position that a holder of power of attorney does not have a cause of action and cannot institute a suit in his own names in respect of rights or entitlements of the donor of the powers of attorney.

Counsel relied on the authority: ***Kateregga Paul vs Tugume Jackson MA No. 885 of 2014***, where it was held that since the plaintiff was a donee of powers  
10 of attorney he did not have a cause of action and could not therefore institute a suit in his own name. He was an agent and he could only sue in the name of the principal.

I have carefully perused the powers of attorney attached as *annexture J* to the  
15 Fr. Kaweesa Ponsiano appointed the plaintiff as his lawful Attorney. The instrument is dated 23<sup>rd</sup> February, 2010. It is indeed true that Rev.

A donee of powers has no cause of action since he does not enjoy any right and ought to have filed this suit in the principal's names. For him to sue in his own names he or she has to show that he/she had an interest in the action. However in this case, the documents which the plaintiffs relied on proved that  
20 he was not privy to the transaction. Going by his own documents, it is clear that the land belongs to Rev. Fr. Kaweesa Ponsiano, but and not to the plaintiff.

The plaintiff in his pleadings makes reference to ***Civil Suit No. 77 of 2009*** which he claims was solved under a consent but omits to attach the consent  
25 decree. By <sup>at</sup>the time in any case he had not been appointed by the donor to deal with the suit property. (***Ref. Annexture J***).





Indeed among the documents relied on by the plaintiff, none of them confers ownership to him as he appears on in each of the documents as either a mere agent or witness.

5 **Order 7 rule 11** of the **Civil Procedure Rules** provides the circumstances under which court may reject a plaintiff. Under **rule 11 (a), (d) and (e)** thereof, court may reject a plaintiff where it does not disclose a cause of action; where it appears from the plaintiff that it is barred by law; and where it is shown by the plaintiff to be frivolous and vexatious.

10 In light of the above findings, this court accordingly upholds the objection and strikes out the plaintiff not only for its failure to disclose a cause of action against the defendants but is also barred by law.

Costs awarded to the 2<sup>nd</sup> and 3<sup>rd</sup> defendants.

  
**Alexandra Nkonge Rugadya**

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**Judge**

**15<sup>th</sup> February, 2023**

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