

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
[LAND DIVISION]
CIVIL SUIT 1077 OF 2020

KALOLI SSERWADA

PLAINTIFF

V

1. NASAKA REMMY
2. BUSINGYE FRANK
3. NAKABUYE JANE
4. LAND POINT LIMITED
5. COMMISSIONER LAND REGISTRATION.....DEFENDANTS

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

RULING

[ON PRELIMINARY OBJECTIONS]

Representation:

Mr. Ssempala David for the Plaintiff.

Mr. Waiswa Henry for the 1st - 3rd Defendants.

Mr. Ssekabira Moses for the 5th Defendant.

Introduction:

- [1] The present suit was brought by the Plaintiff; Mr. Kaloli Sserwadda against the Defendants in respect of two (2) plots described as **Plots 3276 & 2989 Busiro Block 444 at Nkumba**, measuring approximately 0.83 hectares, and 0.095 hectares respectively.

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- [2] The Plaintiff claims to be the owner of **Plot 3276**. He alleges that the 1st, 2nd & 4th Defendants fraudulently and illegally created **Plot 2989** out of his **Plot 3276**. That **Plot 2989** is a non-existent plot. He also alleges trespass against the 3rd Defendant. He seeks *inter alia* for an order of cancellation of the certificate of title to **Plot 2989**, which he alleges was wrongly registered in the names of the 1st & 2nd Defendants, and for a permanent injunction against the 1st - 4th Defendants.
- [3] In their Defence, the 1st - 3rd Defendants deny the allegations in the plaint and contend that the Plaintiff's suit does not merit this Court's consideration and should be dismissed.
- [4] At the commencement of the hearing, Mr. Waiswa; learned defence Counsel raised three (3) preliminary objections by way of written submissions. In answer, in the same manner, Mr. Ssempala replied, hence this Ruling.
- [5] Mr. Waiswa's objections were to the effect that;
- i) The Plaintiff's suit is improperly before court.
 - ii) The Plaintiff's suit does not disclose a cause of action against the 1st -3rd Defendants.
 - iii) The Plaintiff's suit offends the Civil Procedure Rules.
- [6] I will address and determine each objection and answer thereto, separately.

Submissions of Counsel on the 1st Preliminary objection:

- [7] Learned Counsel Mr. Waiswa submitted that there was no proper service of summons on the 1st - 3rd Defendants. That the summons were issued on **December 23, 2020** but were not served upon the 1st - 3rd Defendants until **May 14, 2021**. That

the service was made out of time and offended the Rules of Court, thus making the Plaintiff's suit improperly brought before this Court, and should be struck out. He cited **Order 5 Rule 1 (2) & (3) of the Civil Procedure Rules¹**.

- [8] In his rebuttal, although acknowledging that the summons were served not until May 2021, learned Counsel; Mr. Ssempala submitted that since the Defendants had filed their written statement of defence, they cannot now raise a preliminary objection.

Decision of Court:

- [9] This 1st objection involves a question of fact as to when the summons were issued by the Registrar of this court *vis - a' - vis* when they were served upon the 1st – 3rd Defendants. As rightly pointed out by the Defendants' Counsel, and indeed as acknowledged by the Plaintiff's Counsel, a look at the court record shows that the Registrar issued the summons on **December 23, 2020** and that the same were not served upon the Defendants until the following year in **May 2021**. Clearly the said service was outside the 21 days allowed by the Rules of procedure for service of summons upon the opposite party. See **Order 5 Rule 1 (2) & (3) of the CPR**.
- [10] I accordingly agree with the submissions of Mr. Waiswa that **since service upon the 1st – 3rd Defendants was made way outside the twenty-one (21) day rule, and that since no application for extension of time was made by the Plaintiff within the prescribed period of fifteen (15) days, after expiration of the twenty-one (21) days,**

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¹ S.I 71-1

the Plaintiff's suit is improperly before this court, and cannot stand. Order 5 Rules 2 & 3 (b) of the CPR, applied.

- [11] The said Rules cited are mandatory and not discretionary. See Bitamisi Namuddu v Rwabuganda Godfrey².

This 1st objection is accordingly sustained.

- [12] As it is, since this suit is improperly before this court, there is no need for me to address the other objections raised, as to do so would be superfluous.

- [13] In the result, it is my Ruling that the Plaintiff's suit is improperly before this court and is accordingly, hereby struck out with costs to the 1st – 3rd & the 5th Defendants, all of who filed defences.

(Section 27 of the Civil Procure Act, applied).

I so Order,



P. BASAZA - WASSWA

JUDGE

February 24, 2023

Ruling delivered electronically on the Judiciary ECCMIS system and via email to the parties.

² SCCA No. 016 of 2014