THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(LAND DIVISION)

CIVIL SUIT NO. 0588 OF 2021

GITTA ALEX:::PLAINTIFF

VERSUS

1. KAWUKI ABDUL
2. COMMISSIONER LAND REEGISTRATION::::::::::::::DEFENDANTS

Before: Hon Justice Tadeo Asiimwe

RULING ON A PRELIMINARY OBJECTION.

The plaintiff brought this suit against the defendants seeking for cancellation of entries entered by the 2nd defendant on the suit land that makes the 1st defendant a registered proprietor, permanent injunction, an order compelling the 2nd defendant to re instate or complete the entry registering **Nantongo Diana Namuddu** as the registered proprietor of the suit land, an order compelling the 1st defendant to surrender a land title and transfer documents, a declaration that the 1st defendant is a trespasser, general damages interest and costs.

In his written statement of defence, the 1st defendant denied liability and pleaded that he has been wrongly dragged to court and prayed that the suit should be dismissed at the earliest stage.

At the hearing, the 1st defendant was represented by Counsel Nsimbe Ibrahim, Arinaitwe Sharon for the 2nd defendant while the plaintiff was represented by Counsel Ofumbi Dan.

The 1st defendant's counsel raised a preliminary objection to the effect that the suit discloses no cause of action against the 1st defendant. Both advocates were directed to file written submissions which they did.

Determination.

I have carefully read and considered the arguments raised in the submissions of both parties, details of which are on the court record and the pleadings. Both lawyers have ably and rightly addressed the requirements for founding a cause of action.

The issue for court's determination therefore is **whether the suit discloses a cause of action.**

A cause of action is defined as every fact which is material to be proved to enable the plaintiff succeed or every fact which if denied, the plaintiff must prove in order to obtain a judgment. (**Cooke vs Gull LR 8E.P 116, Read v Brown 22 QBD P.31**). It is disclosed when it is shown that the plaintiff had a right, and that right was violated, resulting in damage and the defendant is liable. This position has been reiterated in the Supreme Court decision of **Tororo Cement Co. Ltd v Frokina International Limited SCCA No.2 of2001.**

The question of whether a plaint discloses a cause of action must be determined upon perusal of the plaint alone together with anything attached so as to form part of it. See; **Kebirungi v Road Trainers Ltd &**

2 others [2008] HCB 72, Kapeka Coffee Works Ltd v NPART CACA No. 3 of 2000.

In the present case, the plaintiff pleaded that he purchased the suit land from one **Nantongo Diana Namuddu** as a registered proprietor. At the same time the plaintiff goes on to make a prayer seeking to compel the 2nd defendant to register the said seller on the suit land. The 1st defendant has pleaded that he was not a party to the transitions with the plaintiff. That he has been the registered proprietor of the suit land. The 1st defendant's position is quite clear from the pleadings although there was an attempt to cause registration of the suit land to one **Nantongo Diana Namuddu.**

It is settled that a cause of action arises when a right of the plaintiff is affected by the defendant's acts or omissions. **(See; Elly B. Mugabi v Nyanza Textiles Industries Ltd [1992-1993] HCB 227).**

In this case it is clear the plaintiff purchased the Suitland from Diana Sentongo Namuddu and not the 1st defendant. Therefore the Plaintiff's rights if any can only be enforced against the said **Diana Nantongo Namuddu.** The 1st defendant was wrongly sued in the case. The 2nd defendant was moved by the 1st defendant (the registered proprietor) to perform its statutory duty.

In the final result, I find no cause of action against both defendants. The plaint is hereby struck out for non-disclosure of a cause of action.

Costs awarded to the 1st defendant.

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Tadeo Asiimwe

Judge

24/04/ 2023.