

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(LAND DIVISION)
MISCELLANEOUS APPLICATION NO.1406 OF 2020

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(Arising from Civil Suit No.606 of 2015)

KIROMBE REAL ESTATE LIMITED:.....APPLICANT

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VERSUS

JAGDISH MARGHABHAI PATEL:.....RESPONDENT

Before: Lady Justice Alexandra Nkonge Rugadya.

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Ruling (Exparte):

Introduction:

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The applicant brought this application by way of Notice of motion under the provisions of **Section 33 of the Judicature Act cap.13, Section 98 of the Civil Procedure Act cap.71, and Order 6 rules 29 & 30, Order 7 rule 11 (a) & (e), and Order 52 rules 1 & 3 of the Civil Procedure Rules SI 71-1** seeking orders that the respondent's amended plaint in **Civil Suit No.606 of 2015** be struck out for disclosing no cause of action against the applicant.

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It also seeks orders that the plaint in **Civil Suit No.606 of 2015** is not only frivolous, but also vexatious against the applicant, and that costs of the application be provided for.



Grounds of the application.

The grounds in support of the application are contained in the affidavit in support thereof deponed by **Mr. Mahmud Bharwani**, a director of the applicant company.

- 5 He stated that in 2015, the respondent filed **Civil Suit No.606 of 2015** which has since undergone several amendments against the applicant, seeking among others orders for cancellation of the certificate of title of land comprised in **LRV KCCA 142 Folio 24 plot 28 Hannington Road**.

10 That the applicant through its lawyers **M/s Capital Law Partners & Advocates** filed a written statement of defence on 15th July, 2016 wherein the applicant denied all the allegations set out in the plaint, and further indicated the intention of raising a preliminary objection to the effect that the respondent's suit disclosed no cause of action against it.

15 That the respondent had no authority to either apply for the transfer of the lease offer granted to **M/s LALITA AMRATLAL SHAH** into his name, nor did he ever make an application for a lease over the subject property and that at the time of acquisition of the lease in respect of the same, the respondent's lease of 5 years over the same land had long expired and the land was free for allocation by the Kampala District Land Board as the controlling authority.

20 That based on the advice of the applicant's lawyers, it is the deponent's belief that the respondent admits to the fact that he had no running lease over the suit land at the time the applicant acquired the same, and that this suit is not only frivolous, and vexatious, but it also discloses no cause of action against the applicant.

25 Thus it just and equitable that the orders sought in this application are granted.

The respondent did not file an affidavit in reply to oppose this application, despite the fact that they had been duly served with court process as per the affidavit of service on record. Accordingly, this application stands unopposed.



The applicant through its lawyers, **M/s Marlin Advocates** also filed written submissions in support of the application as directed by this court.

Consideration of the application.

I have carefully read the motion, evidence in support thereof as well as the written submissions in support, the details of which are on court record, and which I have taken under consideration in determining whether or not this application merits the prayers sought.

The main issue for determination by this court is whether the amended plaint discloses a cause of action against the applicant.

Counsel for the applicant in their submissions correctly cited the law to applications of this nature to wit; **order 7 rule 11 (a) of the Civil Procedure Rules SI 71-1** which stipulates that a plaint shall be rejected where it does not disclose 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**).

In the case of **Ismail Serugo vs Kampala City Council & Anor., – Supreme Court Constitutional Appeal No. 2 of 1998 – MULENGA J.S.C.**, took cognizance of the three ingredients that constitute a cause of action; and reiterated as follows: –

"A cause of action in a plaint is said to be disclosed if three essential elements are pleaded; namely, existence of the plaintiff's right; violation of that right, and the defendant's liability for that violation.

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 in *paragraph* 5 of the amended plaint that his claim against the defendants including the applicant herein is for cancellation of the certificate of title of land comprised in **LRV KCCA 142 Folio 24 plot 28 Hannington Road** obtained by the applicant from the
5 Kampala District Land Board, the 2nd defendant, through fraud and transferred to the 3rd defendant with knowledge of the plaintiff's (respondent) interest in the suit land.

Counsel for the applicant argued that the respondent having illegally obtained an interest in the suit land prior to his lease expiring brought this suit in bad
10 faith, and that this court should not condone such illegalities to allow the applicant to be put to undue expense of defending a frivolous and vexatious suit.


The issues on the acquisition and ownership of the suit property however as raised in this application including the question as to whether or not the
15 applicant fraudulently got registered as proprietor of the suit land; whether or not there had been collusion or illegalities in any of the transactions are all triable matters requiring each side to adduce evidence the authenticity of which must be tested during a formal trial.

This application is therefore dismissed.

20 Costs await the outcome of the main suit.

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Alexandra Nkonge Rugadya
Judge

25 **20th March 2023.**

Delivered by e-mail

20/3/2023