

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA

[LAND DIVISION]

MISC. APPLICATION NO. 2183 OF 2023

(ECCMIS DRAFT NO. 620 OF 2023)

[ARISING FROM HCCS NO. 2826 OF 2016 (FORMERLY HCCS NO. 0491 OF 2012)]

1. ELEANOR BYARUGABA

2. KEMBABAZI CATERING CENTRE LTD

APPLICANTS / DEFENDANTS

V

AMIN VIRANI

RESPONDENT / PLAINTIFF

BEFORE: HON. LADY JUSTICE P. BASAZA - WASSWA

RULING

[ON PRELIMINARY OBJECTIONS]

Representation:

Ms. Murangira Kasande Vennie for the Applicants / Defendants

Mr. Isingoma Esau for the Respondent / Plaintiff

Introduction:

[1] This is a Ruling in an application brought by motion, by which the Applicants seek that the Head suit vide HCCS No. 2826 of 2016 is dismissed. They raise four (4) preliminary objections as shown below.

Murangira Kasande Vennie 10/11.

- [2] As at the date of this Ruling, the name of the 1st Applicant / Defendant, who is since deceased, was substituted in the Head suit with the names of her legal representatives, under **Order 24 Rule 4 of the Civil Procedure Rules¹**. The said legal representatives are: **Mr. Augustine Ishasha Bwankosya, Ms. Florence Bwankosya Lwanga, Ms. Kelvin Origye Byarugaba, Ms. Emily Nyakwezi Byarugaba and Mr. Peter Ainebyoona**, to all of whom letters of Probate were granted by the High Court vide **HCT-00-FD- AC- 0762-2019**.

Background:

- [3] In the Head suit, the Plaintiff / Respondent sued the Defendants / Applicants in alleged trespass to property comprised in **LRV 4333 Folio 3 Plot 89 at Katalima Road** (hereinafter referred to as; '**the suit property**'). He claims that the suit property belongs to him, and seeks for an order of demolition of a wall fence that he claims was unlawfully constructed on the suit property by the Defendants.
- [4] He further contends that the Defendants are the registered proprietors of the neighbouring property comprised in **LRV 4034 Folio 14, Plot 85 – 87 at Katalima Road**. He also seeks for general damages, interest and costs of the suit, against them.
- [5] In answer, in their defence, the Defendants deny the allegations of trespass and *inter alia* aver that at all material times they have been in occupation of the suit property for over twenty – five (25) years. And, that Mr. Virani's title is subject to



¹ S.I 71-1

their alleged interest / right to occupy the same under the doctrine of adverse possession.

The Applicants' case:

[6] The preliminary objections raised by the Applicants / Defendants are:

- i) That the plaint in the Head suit does not disclose a cause of action against them.
- ii) That the Plaintiff / Respondent has no *locus standi* to sue them.
- iii) That the plaint in the Head suit is frivolous and vexatious and contravenes **Order 7 Rules 1 and 11 of the Civil Procedure Rules.**
- iv) That no filing fees for the Head suit were ever paid, and that the Head suit is therefore a nullity and an abuse of court process.
- v) That the Plaintiff / Respondent never filed an affidavit in reply to the written statement of defence contrary to **Order 8 Rule 18 (5) of the Civil Procedure Rules.**

The Respondent's answer:

[7] The Respondent opposed the application in an affidavit in reply, and contends:

- i) That the plaint discloses a cause of action against the Defendants and raises triable issues, and is properly before court.
- ii) That he is the registered proprietor of the suit property.
- iii) That all the necessary court fees were assessed by court at the time of filing and were paid as per a general receipt attached.
- iv) That failure to file a reply to the written statement of defence does not amount to an admission of the assertions made therein.

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The Applicants' Rejoinder:

- [8] The gist of the Applicants' re-joinder was, *inter alia* that the copy of the receipt of payment for fees that the Respondent attached to his affidavit in reply is a forgery.

Submissions by Counsel

- [9] Learned Counsel for each party filed written submissions. For brevity, I will not reproduce their submissions here. I have duly considered all their arguments and will make reference to them if / where necessary.

Analysis by Court:

- [10] To determine whether a plaintiff discloses a cause of action or not, a court is required to look at the plaintiff only. Order 7 Rules 1 (e) & (g) and 11 (a), (c), & (e) of the Civil Procedure Rules provide that a plaintiff shall contain the facts constituting the cause of action and when it arose and the relief that the Plaintiff claims. And, that a plaintiff shall be rejected where it does not disclose a cause of action, where it is frivolous or vexatious, or where an insufficient fee has been paid, and on being required by court to pay the requisite fee within a time to be fixed by the court, the Plaintiff fails to do so.

- [11] Mulenga, JSC., in Baku Raphael Obudra & Obiga Kania & the Attorney General² stated that upon an application to strike out a plaintiff for not disclosing a cause of action, the court ought to restrict its ruling to the defect of the plaintiff and not to decide on the merits of the case, except where the court is satisfied that the cause of action disclosed is clearly not maintainable in law. (Underlining added)

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² SC Constitutional Appeal No. 1 of 2003

Also see the same principle espoused in Kapeka Coffee Works Ltd vs. NPART³.

[12] A cause of action is defined in Black's Law Dictionary⁴ as:

'A group of operative facts giving rise to one or more bases for suing; a factual situation that entitles one person to obtain a remedy in court from another person; claim'

[13] In Ismail Serugo vs. Kampala City Council⁵, the Supreme Court stated that:

'a cause of action in a plaint, is said to be disclosed if three (3) elements are pleaded namely;

- i) Of the existence of the Plaintiff's right
- ii) Violation of that right and
- iii) Of the Defendant's liability for that violation'

[14] I have perused the Plaint only, and in my view, the plaint discloses a cause of action as all the three (3) elements listed in the Ismail Serugo case (supra) are pleaded therein.

[15] In clause 6 of the plaint, the Plaintiff pleads alleged ownership of the suit property, that he is the registered proprietor thereof. He further pleads alleged encroachment on the suit property purportedly by the Defendants. He also pleads alleged deprivation of use and enjoyment of the suit property and alleged loss and damage to himself.

[16] I accordingly find no merit in the Applicants' objections listed in paragraph [6] clauses: (i) and (iii) of this Ruling, and I overrule them.

[17] Since I have found that the plaint discloses a cause of action against the Defendants, it follows that I also find that the Plaintiff / Respondent has *locus*

Masaka Hamuwa 10/11

³ COA CA No. 3 of 2000

⁴ 9th ed. at page 251

⁵ SC Constitutional Appeal No. 2 of 1998

standi to sue the Defendants. *Locus standi* relates to the first of the three elements listed in the Ismail Serugo case (supra). It is defined in Black's Law Dictionary⁶ as:

'A place of standing, the right to bring an action or to be heard in a given forum'
(Underlining added)

[18] In Kithende Appolonia & 2 others vs. Eleanor Wismer⁷, the court of Appeal defined *locus standi* as;

'The right that one has to be heard in a court of law or other appropriate proceedings. Once one has a direct interest in a matter, then one is eligible to claim relief respecting that matter if that one's interest is being adversely affected'
(Underlining added)

[19] By his contention in his pleadings; **'that he is the registered proprietor of the suit property, as per the copy of a certificate of title to the suit property, attached as annexure 'A' to the plaint'**, the Plaintiff has shown *prima facie*, that he has sufficient interest in the subject matter in the Head suit, and has a right to be heard at the trial in respect of the matter. That objection is therefore also overruled.

[20] Following suit, I also find that the plaint in the Head suit is neither frivolous, nor vexatious.

[21] On the question: **'whether or not the Plaintiff / Respondent filed a reply to the written statement of Defence'**, it is best suited that the said question be dealt with at the trial of the Head suit.

[22] For the question on filing fees, I noted from the file of the Head suit, that the Plaintiff / Respondent paid the requisite filing fees.

Masamba Mungu 19/1.

⁶ 9th ed. at page 1026

⁷ COA C/A No. 34 of 2010

Decision of Court:

[23] In the final result, this application fails and is dismissed with costs to the Plaintiff / Respondent. (Section 27 of the Civil Procure Act, applied).

The Head suit is set down for a pre- trial scheduling on January 11, 2024 at 10am as earlier fixed.

I so order,



P. BASAZA - WASSWA
JUDGE

January 10, 2024

Ruling delivered via email to the parties, and uploaded on the Judiciary ECCMIS Portal.

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2. esau@kandk.co.ug Respondent's Counsel.