

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MASINDI
CIVIL SUIT NO.023 OF 2016**

BUNYORO KITARA REPARATIONS AGENCY LTD:

PLAINTIFF

VERSUS

1. ATTORNEY GENERAL

2. TULLOW OIL UGANDA OPERATIONS PTY LTD :::::

DEFENDANTS

3. TOTAL EXPLORATION & PRODUCTION UGANDA

4. CHINA NATIONAL OFFSHORE OIL CORPORATION

RULING BY JUSTICE GADENYA PAUL WOLIMBWA

1.0 Introduction

Civil Suit No. 23 of 2016 was filed on 16th June 2016 by the Plaintiff against the Attorney General of the Republic of Uganda and Total E&P (Uganda) B.V; Tullow Uganda Operations Pty and China National Offshore Oil Corporation (CNOOC) Uganda Limited seeking orders that a permanent injunction does issue restraining defendants and all other actors working as their servants, workmen, representative or for and on their behalf in the oil exploitation and exploration; a declaration that all land titles granted to speculators 10 years before and after declaration that oil deposits in the suit land is economically viable and ready for exploration were fraudulently obtained and therefore null and void; cancellation of land titles fraudulently issued to individuals; a declaration that the indigenous people are entitled to a share of the oil royalties in the suit land on a percentage to be determined by court; general damages; aggravated damages and costs of the suit.

On 19th December 2018, when this matter came up for hearing, counsel for the 2nd to 4th Defendants intimated to court that he wished to raise preliminary points of law that would have the effect of disposing of the entire suit. The Plaintiff's counsel was not ready to proceed with the hearing of the preliminary points of law. The court, however, allowed counsel for the Defendants to raise the preliminary objections and adjourned the case to 16th January 2019 to allow the Plaintiff's counsel to respond to the same. Both counsel made oral submissions. This ruling, therefore is in respect to the preliminary objections raised by counsel for 2nd to 4th Defendants, who for ease of reference will be referred to as the 'Applicants'. The Plaintiffs against whom the preliminary objection has been raised will be referred to as the 'Respondents'.

2.0 Representation

The Respondents/ Plaintiffs were represented by Messrs. Ayena Odongo & Co. Advocates. The 1st Defendant was represented by the Attorney Generals' Chambers, while the Applicants/2nd to 4th Defendants were represented by Messrs. Sebalu & Lule Advocates and Legal Consultants.

3.0 Arguments of the Applicants

Counsel for the Applicants raised two preliminary points of law to the effect that;

1. The suit has been filed as a representative action in non-compliance with the provisions of Order 1 Rule 8 of the Civil Procedure Rules SI 71-1; and
2. The plaint does not disclose a cause of action against the Defendants and particularly the 2nd to 4th Defendants

The main argument of the Applicants is that the Respondent never named and advertised a list of the intended plaintiffs, when it applied and got a representative order to file this suit which is the subject of litigation as required by Order 1 rule 8 of the Civil Procedure Rules. He submitted that O.1 r.8 of the Civil Procedure Rules is couched in mandatory terms and any contravention thereof is fatal to the suit. He submitted that Order 1 rule 8 (1) of the Civil Procedure Rules, provides that:

where there are numerous persons having the same interest in one suit, one or more of such persons may, with the permission of the court, sue or be sued, or may defend in such suit, on behalf or for the benefit of all persons so interested. But court shall in such case give notice of the institution of the suit to all such persons either by personal service or where, from the number of persons or any other cause, such service is not reasonably practicable, by public advertisement, as the court in each case may direct.

Counsel submitted that it was incumbent on the Respondent to publish and advertise all the people they intended to represent as required by the Rules instead of claiming that the suit was being brought on behalf of all the indigenous people of Bunyoro Kitara Kingdom. Counsel submitted that it was therefore, wrong for the Respondent to just maintain that it was representing all the people of the Albertine Region without naming them.

Counsel for the Applicant relied on the case of **Joseph Kasozi & 50,000 others versus UMEME Limited, HCCS No. 188/2010**, where Justice Hellen Obura, as she then was, dismissed a suit where the plaintiff had brought it on behalf of 50,000 consumers of electricity without naming them. In that case the Judge ruled that:

I find that failure to list the intended plaintiffs whatever their number was contravened the provisions of O. 1 r.8 of the Civil Procedure Rules and the effect is fatal in that no notice was actually given to them as required by the rules.

The Judge in dismissing the suit added that case was incurably defective and that no amendment could save it.

Secondly, counsel submitted that the suit was untenable because it was brought on behalf of an association which, was unregistered and therefore, had no capacity to sue or be sued. Counsel referred the court to the title of the Representative Order which indicated that the suit was being filed by Bunyoro Kitara Reparations Agency Limited on behalf of Bunyoro Kitara Reparations Association, which is an unregistered association. Counsel submitted that a suit which is brought on behalf of a none existent entity or an unincorporated body, is a nullity. To buttress his arguments, counsel for the Applicant, relied on the case of **Uganda Freight Forwarders versus the Attorney General and Another Constitutional Petition No. 22 of 2009**, which was dismissed because the petitioner had filed it on behalf of unincorporated association, which had no capacity to sue or be sued.

3.1 Response by the Respondent

On the other hand, counsel for the Respondent/ plaintiff submitted that, from the wording of O.1 r. 8 of the Civil Procedure Rules, the draft man intended it to be mandatory that any suit filed by a person in his or her capacity and on behalf of any other strictly required to obtain a representative order. He submitted that in compliance with Order 1 rule 8 of the Civil Procedure Rules, the plaintiff before filing Civil Suit No. 23 of 2016, through its coordinator, a one Batwale Doviko, applied under Misc. Cause No. 54 of 2013 and was granted a Representative Order to sue on behalf of the people of Bunyoro Kitara Kingdom affected by the suit and that the order for substituted service was advertised in *Enganzi*, a weekly newspaper as well as the *New Vision* Newspaper or *Monitor* Newspaper within 10 days from the date of the order. He further submitted that the plaintiff advertised the Representative Order in the *Monitor Newspaper*.

Counsel submitted that according to **Innocent Orishaba & 25 others versus Global Trust Bank (U) Ltd HCCS NO. 194 of 2009**, it was held that in regard to O.1 r.8 Civil Procedure Rules, the first thing is for the applicant to get permission from court to bring a representative suit; and the second is giving notice of institution of the suit to all such persons on whose behalf the suit is brought either by personal services or by public advertisement if people to be represented are very many in number. That, indeed, the plaintiff obtained a representative order and Batwale Doviko, the Coordinator of Bunyoro Kitara Reparations Agencies Limited,

representing the interests of the marginalised group of Bunyoro Kitara people advertised the same in the monitor newspaper.

Referring to the case of **Joseph Kasozi & 50,000 others versus UMEME Limited, HCCS No. 188/2010**, counsel submitted that the authority cited by the Defendants' counsel is distinguishable from the instant facts in this case, in that the plaintiff did not publish the order and the notice granted by court. He however, submitted that in the instant case, the plaintiff took all the necessary steps that were required under O.1 r.8 of the Civil Procedure Rules and advertised the order in the monitor newspaper and through it notified all those on whose behalf a representative order had been obtained of the notice of the suit. Counsel submitted that it was not practicable for the plaintiff to attach the list of all the people covered under the representative order because they were so **numerous, and it would therefore not be practicable to list them.**

On the issue of suing on behalf of an association that is Bunyoro Kitara Reparations Association which is a none existing entity, counsel submitted that it is not tenable before this court. He submitted that the plaintiff first formed an association on 1st April 2013 and its aim was address the interests of the marginalized people of Bunyoro Kitara and they registered the constitution with Uganda Registration Service Bureau. He submitted that the plaintiff having recognised that it did not have the capacity to sue, later on formed and registered Bunyoro Kitara Reparations Agencies Limited, a company limited by guarantee, which has capacity to sue or be sued. Counsel, admitted that while he does not dispute that the Association has no legal capacity to sue, Bunyoro Kitara Reparations Agencies Limited which brought this suit is legally recognised under the law and that as such the suit was competent.

Referring to the case of **Uganda Freight Forwarders Association and Uganda Clearing Industry and Forwarding Association versus the Attorney General and Great Lakes Ports Limited, Constitutional Petition No. 22 of 2009** which was cited by counsel for the 2nd to 4th defendants counsel submitted that the authority is distinguishable from the instant facts because that case was filed on behalf of a non-existent party and in the instant case Bunyoro Kitara Reparations Agencies Limited is legal entity which applied for a representative order to protect and safeguard the interests of the Bunyoro people. In conclusion, counsel invited the court to dismiss the preliminary objections raised by the Applicants.

3.2 Arguments in Rejoinder

In rejoinder, counsel for the Applicant submitted that the advert still fell short of what is required in a suit of this nature. Still relying on the case of **Joseph Kasozi & 50,000 others versus UMEME Limited, HCCS No. 188/2010**, counsel for the Applicants submitted that it was mandatory that a list of all such persons should be advertised in the newspaper so as to enable them respond in accordance with O.1 r.8 (2) of the Civil Procedure Rules. Counsel, also relied on the case of **Ibrahim**

Buwembo and 2 Others versus M/s UTODA Limited HCCS 664 of 2003 (Commercial Division), where Justice Kiryabwire as he then was, held that:

the requirement to give proper notice cannot be regarded as a mere technicality or direction to be dispensed with. The notice by public advertisement must disclose the nature of the suit as well as the relief claimed therein so that the interested parties can go on record in suit either to support the claim or to defend it. In this case I find that the necessary notice by way of public advertisement was given but that said notice failed to show the names of the intended 800 plaintiffs.

Again, here, the court emphasised the need for the Applicant of a representative order to particularise the intended plaintiffs and given them notice of the intended suit, with clear information regarding the cause of action and the relief sought.

4.0 Resolution of the first preliminary objection

Order 1 rule 8 of the Civil Procedure Rules, which is relevant to this application, provides that:

where there are numerous persons having the same interest in one suit, one or more of such persons may, with the permission of the court, sue or be sued, or may defend in such suit, on behalf or for the benefit of all persons so interested. But court shall in such case give notice of the institution of the suit to all such persons either by personal service or where, from the number of persons or any other cause, such service is not reasonably practicable, by public advertisement, as the court in each case may direct.

A representative action filed under Order 1 Rule 8 Civil Procedure Rules must be in respect of a definitive and identifiable group of persons who all bear the same interest. In **Ibrahim Buwembo and 2 others versus M/s UTODA LIMITED HCCS 664 of 2003**, Justice Kiryabwire, as he then was observed that:

the object of Order 1 rule 8 is to facilitate a large group of persons who are interested in the same action to sue collectively without recourse to the normal procedure where each one of them would individually maintain a separate action by way of a separate suit... The person concerned must have the same interest in the suit and can collectively be called plaintiffs or defendants.

I may equally add that the intended plaintiffs must be interested in the same remedies and their consent must be obtained before an application for a representative order is applied for. Order 1 rule 8 further requires that the representative order must be advertised as directed by the court and it must contain

the full list of all the identified prospective plaintiffs or defendants. This point was emphasised in the case of **Dr. James Rwanyarare and Others versus Attorney General Constitutional Petition no. 7 of 2002** which was quoted in **Uganda Freight Forwarded Association and Uganda Clearing Industry and Forwarding Association vs. The Attorney General and Great Lakes Limited Constitutional Petition no. 22 of 2009**, where the court observed that:

Under Order 1 rule 8(1) of the Civil Procedure Rules, a person may bring a representative action with leave of the trial court. It would have been at that stage of seeking leave, that the first petitioner would have disclosed the identity of those to be represented and whether he had their blessings to do so. We cannot accept the argument of Mr. Walubiri that any spirited person can present any group of persons without their knowledge or consent. That would be undemocratic and could have far reaching consequences. For example, as counsel for the respondent rightly submitted, if the first and second respondents lost the action with costs to the respondent but they were unable to raise the costs, how would the respondents recover those costs from the unknown people called Uganda Peoples Congress?

The import of this decision is that nobody can bring a representative action on behalf of another person or persons without seeking their informed consent and that it is mandatory to notify persons on whose behalf the intended suit is going to be instituted so that they are aware and can own up both the positive and negative consequences of the suit.

The Respondent in the instant suit applied for the representative order but fell short of the requirements of Order 1 rule 8 of the Civil Procedure Rules. In particular, the Respondent did not name and particularise all the intended plaintiffs. Secondly, the Respondent, did not also seek the consent of these intended plaintiffs to bring the action on their behalf. And thirdly, the Respondents did not advertise all the names of the intended plaintiff's other than just naming them as indigenous peoples of Bunyoro Kitara Kingdom, which is generic and lacks specificity required in **Order 1 rule 8 of the Civil Procedure Rules**.

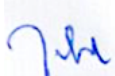
Before, I take leave of this matter, I have to address the sub issue of the legality of the Respondent suing or obtaining the Representative Order on behalf of an unregistered association. The record shows that the Respondent filed the application for a representative order on behalf of Bunyoro Kitara Reparations Association, which is an unregistered association. The Respondent while admitting the shortcoming explained that it had cured the default by bringing the suit in the names of Bunyoro Kitara Reparations Agency Limited, a company Limited by Guarantee, which has capacity to sue or be sued. An unregistered association like Bunyoro Kitara Reparations Association, has no legal personality and cannot therefore, confer any rights to the Respondents to sue on its behalf. This cannot be correct because,

an unregistered association or entity cannot sue or be sued and as such cannot confer rights to sue on any person including a registered company like Bunyoro Kitara Reparations Agency Limited. A suit brought on behalf of a none existent company is therefore a nullity. See: **Uganda Freight Forwarded Association and Uganda Clearing Industry and Forwarding Association vs. The Attorney General and Great Lakes Limited Constitutional Petition no. 22 of 2009**

In conclusion therefore, there is no proper suit before the court and I accordingly dismiss the suit with costs to the Defendants. Since there is no proper suit before the court, there is no need for me to go into the merits of the second preliminary objection as to whether the plaint discloses a cause of action or not.

5.0 Decision

I uphold the preliminary objection raised by the Applicants and I accordingly dismiss the suit with costs. It is so ordered.

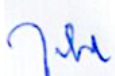


Gadenya Paul Wolimbwa

JUDGE

12th May 2020

This ruling will be emailed to the parties on 14th May 2020 by the Court Registry.



Gadenya Paul Wolimbwa

JUDGE

12th May 2020