

it is mandatory upon the court to reject a plaint which does not disclose a cause of action. He prayed that the plaint be rejected with costs under order 7 rule 11 of the Civil Procedure rules.

On the other hand the learned counsel appearing for the plaintiff submitted that the objection should be overruled because the cause of action is shown in the plaint and would be expanded upon the evidence in the course of the proceedings and would further be argued upon when this court receives the annexures which are attached to the plaint. On the face of it the plaintiff enjoyed the right in that he has been in the occupation of the suit pieces of land. He had an offer of that piece of land and instructions to survey had been given to him. He had had the piece of land surveyed and then out of the blue the defendants had that piece of land surveyed into their names and had the certificate of title granted to them. The case for the plaintiff is that his right had been violated. The land having been offered to him earlier and having had it surveyed earlier he was seeking relief from this court to vindicate and declare that the latter claim of offer of survey and ultimately the issue of titles subordinated upon his earlier right. That constituted a cause of action in this matter. The cases quoted by his learned brother are distinguishable from the present case because in the instant case there was a cause of action whereas in the others no cause of action existed. He prayed that the objections be rejected with costs.

In reply Mr. Musana submitted that the court must look at the plaint and nothing else. It is not enough just to allege by the plaintiff that he tried to get title of the land earlier and the defendant got title before him. The title is conclusive evidence of ownership under section 56 of the registration of Titles Act and could only be impeached for fraud but unfortunately fraud has not been pleaded in this case.

He renewed his earlier prayer that the plaint was bad in law and should be rejected.

The provision of order 7 rule 11 (a) is that the plaint shall be rejected where it does not disclose a cause of action. There are a number of authorities where a plaint could be rejected under Order 7 Rule 11 of the CPR. In Cottar v Attorney General for Kenya 193 AC P. 18 it was said by **Sir Joseph Sheridan CJ** as he then was

“What is important in considering whether the cause of action is revealed is by the pleadings is the question to what right has been violated. In addition of course the plaintiff must appear as a

person aggrieved by the violation of his right and the defendant as a person who is liable, then in my opinion a cause of action has been disclosed and any omission or defect may be put right by amendment. If on the other hand any of those essentials is missing no cause of action has been shown and no amendment is permissible.”

And Spry v P in Auto Garage vs Motokov v (Supra) quoting with approval the decision in Hassman vs. National Bank of India stated;

“The provision that a plaint shall be rejected appears to be mandatory.”

The decision was expressly upheld in **Prince v Kelsall [1957] EA 757 and Sullivan v Ali Mohammed Osman [1959] EA 239. And in Amin Electrical Service v Ashok Ltd Civil Case No. 118 of 1959 MB No. 18/61.** Reported Digest of Uganda High Court Cases on Civil Procedure and Evidence P.39 It was held that to enable a court to reject a plaint on the ground that it discloses no cause of action it should look at the plaint and nothing else **Chitley 6th Edition vol. 2 P.2354.**

A careful study and scrutiny of the plaint reveals that the plaintiff had for many years kept his cattle and cultivated the land at Kiseruka the subject of the present case. He applied for lease for a term of 19 years there being no dispute. He went ahead and paid all the money he was required to pay under the lease offer. Later on, on 20th September 1983 instructions to survey the land was granted Senior staff Surveyor hut on 20th November a surveyor at kyenjojo Survey Camp wrote to the Senior staff Surveyor stating that the land had already been surveyed and the plaintiff learnt later that the defendant had managed to have the surveyed in their names thus blocking his chances of having the land surveyed and hence the institution of this case. In one of the prayers the plaintiff sought for a declaration that the purported lease offer to the defendants and the subsequent survey of land earlier granted to the defendant were obtained by fraud and therefore null and void.

Applying the principles enunciated above to the instant case. The plaintiff appears as a person aggrieved by the violation of his right and the defendant as persons liable. The plaint showed that the plaintiff had for many years kept his cattle and cultivated the land in dispute and had taken steps to see to it that he obtained title of the same by applying for lease but the defendant without

knowledge of the plaintiff subsequently went ahead and had the land surveyed in his names before of course the plaintiff had done so. This was a naked violation of the plaintiff's right and it is the considered opinion of this court that the defendant was liable and in this way the plaintiff discloses a cause of action. The learned counsel appearing for the defendant submitted that the plaintiff did not allege fraud that the defendant got title fraudulently. I do not agree with the learned counsel appearing for the plaintiff over this matter. In the first place the plaintiff did allege that the defendant obtained the title of the disputed land fraudulently. He was seeking for a declaration from this court that the purported lease offer granted to the defendant was obtained by him fraudulently. It would appear that the learned counsel was referring to his written statement of defence when he submitted that possession of title was conclusive evidence of ownership under **section 56 of the RTA (Registration of titles Act)** and could only be impeached by fraud but It was held in **Amin Electrical services vs. Ashok Theatres Ltd Supra** that to enable a court to reject a plaintiff on the ground that it disclosed no cause of action it should look at the plaintiff and nothing else. Therefore the fact that the defendant had had the land in dispute registered in his names as per his written statement of defence cannot be considered when dealing with the question as to whether the plaintiff discloses a cause of action or not. The courts look at nothing but the plaintiff alone.

From that observation it is the considered opinion of this court that the preliminary objection that the plaintiff in the instant case that is the plaintiff discloses no cause of action is overruled with costs to the plaintiff.

I. MUKANZA

JUDGE

22/5/91