THE REPUBLIC OF UGANDA

IN THE **HIGH COURT OF UGANDA**

CIVIL SESSION CASE NO. 456 OF 1997

ALOZIO SEBATYA & 2 OTHERS::: **PLAINTIFFS**

VERSUS

ISRAEL KAYONDE & DAVID LULE::: **DEFENDANTS**

BEFORE: THE HONOUR.ABLE MR. JUSTICE PAUL K. MUGAMBA

RUL I NG:

A preliminary objection *was* raised by counsel for the defendants. His argument is that the defendants, two individuals, were wrongly joined to this suit.

On 28th February, 1990 an agreement was signed between one Ben Ssenkungu and M/S Ntangawuzi & Vegetable Growers Association. That agreement is appended to the plaint as annexture B. In the course of time Ben Ssenkungu died and letters of Administration to his estate were granted to the plaintiffs in this action. Upon being granted Letters of Administration it dawned upon the plaintiffs that land which forms part of the estate of late Ssenkungu had been given, under the agreement already cited, for a limited number of years to be used as security with a bank. The loan secured had not been repaid and there was danger of the land title being forfeited. The agreement had provided for the title to be returned to Ssenkungu within 3 years of 30th September, 1989.

This action is brought against one Hon. Israel Kayonde and one David Lule. The agreement does not show, contrary to what counsel for the defendants would let us believe, that the enterprise signatory to the agreement is a limited liability company. Counsel for the plaintiff is correct when he refers to the signatory as an association which is not a limited liability company. As a matter of fact counsel for the plaintiff admitted that it was upon failure to find evidence of limited liability that the plaintiffs elected to proceed against the two persons now joined as defendants. In an association such as the one sought to be sued, or a members club, the proper procedure to follow is laid down in Order 1 rule 8 of the Civil Procedure Rules.

Referring to a similar provision court had this to say in J.J. Campos & Another vs. A.C.L. De Souza & 5 Others (1933) 15 KLR 86, 87.

> "It would seem that Order 1 Rule 8, not only lays down the practice to be followed in cases where there are numerous persons having the same interest in one suit and where one of such persons is suing or being sued on behalf of all, but it contains a direction as to the manner in which the rights of all such persons must be safeguarded. It is in fact mandatory upon the court to see that notice of the institution of the suit is given to all parties interested, and from this it may be inferred that in a case of this sort the court is not at liberty to take cognisance of a suit by or against one or several persons selected from the body of interested persons unless and until the steps set out in the rule are carried out." The emphasis is mine.

The same principle is evident in Kearsley (Kenya) Ltd vs. Anyumba & Others [1974] EA 112.

In the circumstances this suit cannot be properly before this court in the premise that the defendants are representatives of an association without limited liability and the elaborate procedure should have been followed. Nor can it be said that they represent a limited liability company. By its nature a limited liability company is an independent entity to sue and be sued in its name.

In the result I find I must uphold the objection and dismiss the suit with costs against the plaintiffs.

13th December, 2000