



When the suit came up for cross-examination of PW1 on 28.09.2012, learned counsel for the defendant notified court that he will raise an objection on the legality of the suit.

When the plaintiff was allowed to amend the plaint on 2<sup>nd</sup> November 2012, learned counsel for the defendant asked court to amend the issues to include whether the plaintiff has a cause of action and/or *locus standi* to institute the suit against the defendant.

Since this is a preliminary point of law, I will resolve it first.

In his submission learned counsel for the defendant submitted that the test for existence of a cause of action was well settled by the Court of Appeal for East Africa in **Auto Garage vS Motokov No. 3 [1971] EA 514** as follows:

1. The plaint must show that the plaintiff enjoyed a right.
2. The right has been violated.
3. The defendant is liable.

Learned defence counsel submitted that the plaintiff defacto and de jure is not a pensioner and it cannot be said that it enjoys or enjoyed a right within the test of **Auto Garage** case (supra). He contended that the plaintiff has no pensionable right that was violated by the defendant as set out in plaint. That any alleged miscomputation of pension done if any by the Ministry of Public Service does not confer a right to the plaintiff which is capable of being violated. Further that the defendant has no contractual obligation with the plaintiff in matters of pension or terminal benefits of government pensioners. He argued that the pension payable by the defendant is personal to the pension holder. That the defendant has a statutory or contractual obligation with only government pensioners but not the plaintiff, the artificial person. That there is therefore no right that the defendant has violated which the plaintiff enjoyed in relation to pension matters in order to hold the defendant liable.

On the other hand, learned counsel for the plaintiff submitted that a cause of action means a factual situation the existence of which entitles one person to obtain from court a remedy against another

person. He referred to the case of *Sukuku Agaitano Vs Uganda HCCS 298 of 2012* where it was observed by Madrama J that a cause of action is determined upon perusal of the plaint alone and any attachments to it and on the assumption that the averments are true. That all necessary facts have to be alleged in the cause of action.

According to learned counsel, paragraph 3 of the amended plaint summarises the plaintiff's case thus:-

***“The plaintiff brings this suit seeking declaration that the Ministry of Public Service has over the years wrongly computed the pension due to its members which anomaly has resulted into loss of income and untold suffering for its members”.***

That the plaintiff has a valid cause of action against the defendant since it was never disputed during the trial that the plaintiff's members were entitled to pension as former public servants in the Ministry of Public Service. The gist of the plaintiff's cause of action is that the computation of pension of its members is not in accordance with the law pursuant to Circular Standing Instruction (CSI) No. 2 of 2/03 and CSI No. 4 of 1994. That the plaintiff's members are entitled to pension as a matter of right under the constitution and pension laws.

From the record of proceedings there is no authority to show that the Ugandan Government Pensioners who have pensionable rights did authorize the plaintiff, a distinct legal entity to institute this suit on their behalf. In his evidence, PW1 testified that the plaintiff got involved through the Executive Committee which sat in a meeting and decided to institute this suit. However no minutes of such a meeting are on record.

Secondly, the exact number of pensioners who are members of the plaintiff was not made clear to this court. PW1 stated that as Secretary General of plaintiff he has a list of 4444 members all of whom are former public servants having pension problems.

In cross-examination, he stated that out of the 4444 members some have died and before filing the suit many members had died. Whereas PW1 stated that the society has 4444 members the list of such members was not availed to court yet as General Secretary one of PW1's duty would be custody of a register or list of the members of the plaintiff.

As already stated, there is evidence that a majority of members had since died by the time this suit was filed. It remained a guess as to what the exact number of pensioners' claims were being underpaid. There is no evidence that holders of letter of administration are amongst the claimants.

I agree with learned counsel for the defendant that the plaintiff not being a de jure or de facto pensioner does not enjoy or did not enjoy a right within the test of *Auto Garage* case (supra).

In the instant case, the plaintiff has no pensionable right that was violated by the defendant as set out in the plaint. Any alleged miscomputation of pension done if any, by the Ministry of Public Service does not confer a right to the plaintiff which is capable of being violated.

I further agree that the defendant has no contractual or statutory obligation with the plaintiff in matters of pension or terminal benefits of government pensioners.

In his written submissions learned counsel for the plaintiff has argued that the Ministry of Public Service is charged by law to correctly compute and pay pension rightfully belonging to the plaintiff's members and is therefore liable to the plaintiffs. But as rightly submitted by Mr. Bafirawala learned counsel for the defendant, pension payable by the defendant (Ministry of Public Service) is personal to the pension holder. The defendant has a statutory or contractual obligation with only government pensioners but not the plaintiff an artificial person. There is therefore no right that the defendant has violated which the plaintiff enjoyed in relation to pension matters in order to hold the defendant liable.

Learned counsel for the plaintiff argued that his client only sought declaratory orders and therefore cannot be defeated merely because the person has no cause of action.

However, it is trite law that a cause of action does not depend upon the character the relief prayed for by the plaintiff. Praying for declaratory orders does not confer immunity to the plaintiff to institute a suit devoid of a cause of action.

Consequently, I will uphold the objection by learned counsel for the defendant that there are no facts pleaded in the plaint that disclose a cause of action to the plaintiff, a Cooperative Society Limited. I will find that the plaintiff has no cause of action against the defendant. The plaint is rejected.

Since the plaintiff has no cause of action, it follows that he is not entitled the reliefs sought. Having held as such there is no need to look into the other issues. It is a cardinal doctrine of our jurisprudence that a court of law will not adjudicate hypothetical questions and non-issues. A court will not adjudicate a case in abstract or one which is purely academic and/or speculative. Doing otherwise would be engaging into a hollow and futile scenario of court applying the law to the facts for academic purposes.

In view of the circumstances of this case involving very elderly pensioners, each party shall bear its own costs.

**Stephen Musota**

**J U D G E**

**25.08.2015**