

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA, AT KAMPALA**  
**(LAND DIVISION)**

**HCCS CIVIL SUIT NO. 187 OF 2009**

**TRUSTEES OF UGANDA DISCHARGED**  
**PRISONERS AID SOCIETY** ..... **PLAINTIFF**

**VS**

**1. KAMPALA CITY COUNCIL**  
**2. UGANDA WOMEN’S EFFORT**  
**TO SAVE THE ORPHANS** } ..... **DEFENDANTS**

**JUDGMENT BY HON. MR. JUSTICE JOSEPH MURANGIRA**

**1. Introduction**

**1.1 The parties and representation**

The plaintiff through its lawyers, Mungoma, Mabonga, Wakhakha & Co. Advocates brought this suit against the two defendants. The 1<sup>st</sup> defendant, through its lawyers Sendege, Senyondo & Co. Advocates filed a defence to the suit. In defence the 1<sup>st</sup> defendant raised four (4) preliminary objections on points of law. The 2<sup>nd</sup> defendant through its lawyers M/s Mugenyi & Co. Advocates, too, filed a defence to the suit; and in paragraph 6 of its defence raised a preliminary objection to the suit.

**1.2 The case for the plaintiff**

The plaintiff sued the defendants jointly and severally for an order of cancellation of the leasehold title for land comprised in plot 100 spring Road, Kiswa Parish; an order that the leasehold title was procured erroneously, illegally, unlawfully and contrary to the law, a permanent injunction restraining the defendants from interfering with the plaintiff’s land in any manner whatsoever, an order that the plaintiff is rightful proprietor of the said land and in the alternative a bona fide/lawful occupant thereof,

an order compelling the 1<sup>st</sup> defendant and the 2<sup>nd</sup> defendant to handover the certificate of title to the plaintiff and have the same transferred into the names of the plaintiff and those of the 2<sup>nd</sup> defendant struck off, costs of the suit, damages for trespass, general damages, and any other relief as the court may deem fit.”

**1.3** In defence, the two (2) defendants deny that the plaintiff is entitled to any reliefs prayed for in the plaint. In addition the defendants raised preliminary objections as shown herebelow:-

**The 1<sup>st</sup> defendant:**

They are in paragraph 2, 3, 4 and 5 of its written statement of defence:

**“paragraph 2 - The suit is incompetent and unsustainable in law.**

**Paragraph 3 - The plaint is bad in law.**

**Paragraph 4 -The plaintiff has no cause of action against the defendants.**

**Paragraph 5 - The plaintiff has no *locus standi*.**

**The 2<sup>nd</sup> defendant:**

In paragraph 2 of the 2<sup>nd</sup> defendant’s written statement of defence, the 2<sup>nd</sup> defendant averred that:-

**“..... the plaintiff is neither a registered trustee nor a registered non-government organization and neither does it have trustees with capacity to sue and as such has no *locus standi*”.**

Further the 2<sup>nd</sup> defendant in its written statement of defence, paragraph 6 averred that:-

**“In the alternative and without prejudice to the foregoing the 2<sup>nd</sup> defendant shall contend that the claim of the plaintiff is bad in law, frivolous and vexatious.”**

**1.4** On 4<sup>th</sup> day of May, 2012, I delivered a ruling in this case arising out the preliminary objections that were raised by the 2<sup>nd</sup> defendant. The 1<sup>st</sup> defendant never addressed itself on its four (4) preliminary objections it raised in its written statement of defence as indicted hereinabove.

## **2 Findings of the Court in that ruling on 4<sup>th</sup> May, 2012.**

**“The 2<sup>nd</sup> defendant in its submissions insists that the plaintiff being a registered NGO is a not a corporate person with the capacity to sue or be sued in as much as the plaintiff describe itself as a trustee in the title of the plaint. That the pleadings in the plaint do not support that description and even then no single trustee is named in the plaint. That such a trustee ought to be an individual person or a duly incorporated entity. Counsel for the 2<sup>nd</sup> defendant relied for his submissions on the case of Campbell vs Thompson [1953] ALL E.R 831 whereby it was held that:**

**“A members’ club is an association of persons, an unincorporated body, which has no legal entity.”**

**And in the case of Daudi Abdul vs Ahmed Suleiman (1946) 3 EACA 54 it was held that:**

**“Members of unincorporated association should sue or be sued in their personal names unless it can be shown:**

- (a) All members of the class had a common interest.**
- (b) They all had a common grievance.**
- (c) The relief claimed was in its nature beneficial to all of them which when representative action may be taken”.**

**In his reply, the plaintiff’s Counsel submitted that the plaintiff is fully registered NGO with the capacity to sue and be sued. That the plaintiff was issued a certificate of Registration on the 5<sup>th</sup> November, 2008, hence becoming a corporate body with capacity to sue as a registered non-government organization (NGO). Under Section 2 (3) of the Non Government Organization registration Amendment Act of 2006, which reads:**

**“Upon registration of an organization under this Act, and the organization shall become a body corporate with perpetual**

succession and with power to sue and be sued in its corporate name”.

To that extent, I would hold that the plaintiff would have the capacity to sue or be sued in its corporate name. However, the plaintiff never attached on the plaint a copy of the Certificate of Registration. To state that the plaintiff was registered on 5<sup>th</sup> November, 2008 is not enough to prove that it is a registered entity. Counsel for the 2<sup>nd</sup> defendant in his submissions in reply argued that the Certificate the plaintiff is relying on is not the same format as that of Form F and that it is a merely a permit. This Court would to see the certificate of registration of the plaintiff before the raised preliminary objection by the 2<sup>nd</sup> defendant is conclusively resolved interparties by this Court.

In this regard, the question of whether the plaintiff is a registered entity or not remained unanswered. There is need to adduce evidence by the plaintiff for the Court to make a balanced ruling on the preliminary objection raised by the 2<sup>nd</sup> defendant during the trial or/ and produce the certificate of registration at this stage. The issue is no longer an issue of law but rather the issue of fact. Therefore, unless and until the Court sees the plaintiff’s certificate of registration, whether or not it has the capacity to sue or be sued cannot be resolved at this stage.

This preliminary objection is therefore, deferred. I, henceforth, direct the plaintiff to file on the Court record, its Certificate of registration for the Court’s necessary action and to conclusively resolve the said preliminary objection.

Further, upon perusal of the 1<sup>st</sup> defendant’s written statement of defence (WSD), it raises four (4) points of the law which under Order 15 Rule 2 of the Civil Procedure Rules, S.I 71-1 should be resolved first before the framing of the issues. The objections are stated hereinabove in this judgment.

These are points of law which should be addressed by the parties and resolved by the Court before the framing of the issues. Accordingly, pursuant to Order 15 rule 2 of the CPR the parties are directed to file in Court their respective written submissions

**together with the authorities each party would have relied on with parts well highlighted with a lighter as shown herebelow:-**

- (a) The 1<sup>st</sup> and 2<sup>nd</sup> defendants to do so by 11<sup>th</sup> May, 2012 at 12:00 noon and serve Counsel for the plaintiff with the said written submissions on that same date.**
- (b) The plaintiff's Counsel to reply thereof by the 18<sup>th</sup> May, 2012 at 12:00noon and serve the defendant's Counsel on the same date.**
- (c) The 1<sup>st</sup> and 2<sup>nd</sup> defendants' Counsel shall file their final written submissions in reply to those filed by the plaintiff's counsel by the 23<sup>rd</sup> May, 2012 at 12:00 noon."**

The defendant complied with the above directions. However, the plaintiff refused to respond to the preliminary objections that were raised by the defendants.

### **3 Resolution of the preliminary objections raised by the defendants;**

**3.1** Counsel for the defendants complied with the directives of the Court and filed their submissions in time and served Counsel for the plaintiff. Counsel for the plaintiff never responded to the defendants submissions. Counsel for the plaintiff Mr. Stephen Mungoma was reminded by Court clerk to file his written submissions, which as I write this judgment he has filed to do. Nonetheless, I hereby proceed to write this judgment on the six (6) preliminary objections on the points of law.

**3.2** Counsel for the defendants in their arguments submitted that the plaintiff, in accordance with the law, has a bad case. They prayed that the suit be dismissed with costs. Earlier, before the ruling that was delivered on 4<sup>th</sup> day of May, 2012, Counsel for the plaintiff, Mr. Stephen Mungoma, in his submissions maintained that the plaintiff has the capacity to sue and that it has a good case against the two defendants. He prayed that all preliminary objections be dismissed with costs. However, in his submissions Counsel for the plaintiff had not addressed himself to the issues that were raised in the 1<sup>st</sup> defendant's written statement of defence. And even up todate, Counsel for the plaintiff has failed to challenge the 1<sup>st</sup> defendant's preliminary objections on points of law. May be, the plaintiff conceded to the said preliminary objections.

**3.3** I have considered and evaluated the submissions by both parties; and agree with the submission by Counsel for the two (2) defendants. The said submissions by the defendants are not challenged by the plaintiff. The plaintiff failed, neglected or / and refused to make and file a reply to the defendants' written submission on the said six (6) preliminary objections on points of law.

The 2<sup>nd</sup> defendant had earlier raised a preliminary objection that the plaintiff is neither a corporate entity with legal capacity to sue nor is it registered as such as under the Non-Government Organization Act. The 2<sup>nd</sup> defendant reiterated its earlier submissions and the quoted the same authorities of **Campel vs Thompson 1953 (A) ALL. E.R. 831 and Daudi Abudl Ahmed Suleman 1946 EACA 54.**

The plaintiff had earlier in answer to the submissions by Counsel for the 2<sup>nd</sup> defendant insisted that the plaintiff is duly incorporated under the Non Governmental Act. The 2<sup>nd</sup> defendant insists that from the onset and during the conference scheduling they had requested the plaintiff to avail their certificate of incorporation to this Court which duty the plaintiff to date has failed to comply with and furnish this Court with the certificate of incorporation. The 2<sup>nd</sup> defendant contends that the failure by the plaintiff to avail the court with such a certificate denies it *locus standi* for it to institute the current legal proceedings and that further it implies that they did not have the capacity to own the suit property which they are claiming in this Civil Suit. By virtue of that failure the plaintiff has no cause of actions and the suit is bad in law, I so hold

Plaintiff's claim is for *inter alia* cancellation of the leasehold title for the land comprised in plot 100 Spring Road, Kiswa Parish allegedly issued to the 2<sup>nd</sup> defendant by the 1<sup>st</sup> defendant, an order that the leasehold title was granted and procured erroneously, illegally and fraudulently, a permanent injunction, damages and costs. In its defence, the 1<sup>st</sup> defendant raised four preliminary objections in paragraphs 2, 3, 4, and 5 of its written statement of defence , as shown hereinabove in this judgment.

**4.0** I now proceed to deal with the 1<sup>st</sup> defendant's preliminary objections.

#### **4.1 Whether the plaintiff has a cause of action against the 1<sup>st</sup> defendant.**

According to the case of **Auto Garage vs Motokov No.3 1971 E.A**; a cause of action was held to be disclosed in a plaint where it is shown that the plaintiff enjoyed a right, the right was violated by the defendant and the plaintiff has suffered loss or damage.

According to Article 241 of the 1995 Constitution, the authority to hold and allocate land in Kampala District not owned by any person or authority at the time the suit was instituted was vested in the Kampala District Land Board. The suit land that is plot No. 100 Spring Road Kiswa having been located in Kampala was under the Board's exclusive management and control. The plaintiff's action against the 1<sup>st</sup> defendant was filed against a wrong party. Accordingly, I hold that the plaintiff had no right accruing from the 1<sup>st</sup> defendant that could have been violated. I therefore find that the plaint discloses no cause of action against the 1<sup>st</sup> defendant. To that extent this plaintiff's suit would fail.

#### **4.2 Whether or not the plaint is bad in law**

According to Order 7 rule 1 (b) of the Civil procedure Rules SI 71-1, it is a mandatory requirement that a plaint must sufficiently and clearly state the name and description of the plaintiff. Strangely, the claim in this case is instituted by the plaintiff as the Trustees Uganda Discharged Prisoners Aid Society. But paragraph 1 of the plaint introduces the plaintiff as a registered NGO/Association. From the aforesaid, it cannot be ascertained exactly what sort of body the plaintiff is. I make a finding that this is inconsistent with Order 7 rule 1 (b) of the Civil Procedure Rules.

Further, the plaintiff did not attach on the plaint any certificate of registration of the plaintiff. Again, the plaintiff did not attach the Certificate of registration to the plaint show that is a registered non-governmental organization. In my ruling of 4<sup>th</sup> day of May, 2011, I directed to the plaintiff to produce the said documents. However, the plaintiff failed to produce the questioned documents. My interpretation of the

plaintiff's failure to produce the said documents is that the said documents do not exist. In the case of the **Fort Hall Bakerly Supply Co. vs Fredrick Muigai Wangoe [1959] EA 474**, it was held that:

**“(i) the plaintiffs could not be recognized as having any legal any legal existence, were incapable of maintaining the action and, therefore, the Court would not allow the action and, therefore, the Court would not allow the action to proceed.**

**(ii) Since a non-existent plaintiff can either pay nor receive costs there could be no order as to costs.**

**Action struck out. No order as to costs.”**

To that extent, therefore, I agree with Counsel for the defendants that the plaintiff's suit is bad in law.

#### **4.3 Whether the plaintiff has locus standi**

I refer to my finding on the 1<sup>st</sup> objection hereinabove, and only add that it is trite law that unincorporated organizations have no legal existence of their own and cannot institute, maintain or on defend a suit. See **Uganda Freight Forwarders & Anor vs The Attorney General & anor, Constitutional Petition No. 22 of 2009**. It therefore follows that even if the name by which the plaintiff's instituted the claim is anything to go by that is The Trustees Uganda Discharged Prisoners Aid Society), the society as an unincorporated association would have no locus to institute the suit. Lastly, although the plaintiff also alleges that it is a registered NGO, it has not attached the registration certificate to prove that It has the capacity to sue or /and be sued in its cooperate name.

It is also important to note that the above stated preliminary objections were raised in the 1<sup>st</sup> and 2<sup>nd</sup> defendants' written statement of defence were not replied to by the plaintiff. Pursuant to Order 8 rule 18 (1) of the Civil Procedure Rules, which reads:-

**“A plaintiff shall be entitled to a reply within fifteen days after the defence or that last of the defences has been delivered to him or her, unless time extended”,**



The plaintiff failed to make a reply to the defendants' respective defences. The presumption in law is that the plaintiff admitted the 1<sup>st</sup> and 2<sup>nd</sup> defendants' averments in their respective written statement of defence. The plaintiff, it is my finding, therefore that it had no *locus standi* to sue the defendants jointly or /and severally. To that extent, the preliminary objection under this subheading is upheld.

#### **4.4 Whether the plaintiff's suit is sustainable in law.**

From my findings on the hereinabove resolved preliminary objections in favour of the defendants, certainly, this plaintiff's suit is not sustainable in law. The plaint ought to be struck off on ground of being incompetent and the suit of the plaintiff dismissed without costs to the defendants.

### **5. Conclusion**

**5.1** In conclusion, all the preliminary objections raised by the 1<sup>st</sup> and 2<sup>nd</sup> defendants are upheld in favour of the defendants. The plaintiff's suit is barred by law as shown hereinabove in this judgment.

**5.2** In the result and for the reasons given hereinabove, in this judgment, the plaintiff's suit has no merit at all. Wherefore, judgment is entered for each defendant pursuant to Order 6 rules 28, 29 and 30 of the Civil Procedure Rules, Statutory Instrument no. 71-1 in the following orders; that:-

(a) The plaint is struck out and the suit is hereby dismissed.

(b) The 2<sup>nd</sup> defendant is the lawful registered proprietor of the suit property comprised in plot 100 Spring Road, Kiswa Parish, Nakawa Division, Kampala Capital City Authority.

(c) The people claiming under a non – existing entity shall handover vacant possession of the suit property to the 2<sup>nd</sup> defendant as soon as practicable but not later than (10) ten days from the date of this judgment.

(d) No order as to costs (see the case of **The Fort Hall Bakery Supply Co. vs Fredrick Muigai Wangoe** (supra).

Dated at Kampala this 25<sup>th</sup> day of February, 2013.

sgd

**Murangira Joseph**

**Judge**