

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL DIVISION)

CIVIL SUIT NO. 867 OF 2014

1. CITY ALUMINIUM & GLASS SERVICES LTD
2. ONYANGO OKETCH JOHN:::::::::::::::::::PLAINTIFFS
- VERSUS**
1. BARCLAYS BANK OF UGANDA LTD
2. BABIRYE LEAH ::::::::::::::: DEFENDANTS

BEFORE: THE HON. JUSTICE DAVID WANGUTUSI

RULING:

In this suit the Plaintiffs City Aluminium & Glass Services Ltd and Onyango John Oketch known as the 1st and 2nd Plaintiff sued Barclays Bank of Uganda Ltd and Babirye Leah to be referred to as the 1st and 2nd Defendants respectively.

The Plaintiffs claim is for recovery of Uganda shillings 2,584,164,879/=.

Before the hearing could start, the Defendants raised preliminary objection to the effect that the plaint did not disclose a cause of action against them.

The matters for consideration in such objections were laid out in ***Auto Garage vs. Motokov [1971] EA 514*** namely;

- a) That the plaint must show that the Plaintiff enjoyed a right.
- b) That the right has been violated.
- c) That the defendant is liable.

The foregoing are established upon perusal of the plaint and attachments thereto with an assumption that the facts pleaded or implied therein are true, ***Attorney General vs. Oluoch (1972) EA 392.***

The Plaintiffs base their suit on a Power of Attorney given to the 2nd Plaintiff by the 2nd Defendant, a Memorandum of Understanding and a resolution passed by the 1st Plaintiff as a way of effectualizing the contents of the Power of Attorney and the Memorandum of Understanding.

The plaintiff alleges that by a subsequent Resolution by the 1st Plaintiff authorized it to borrow money from the 1st Defendant all based on the Power of Attorney, the Memorandum of Understanding using the 2nd Defendant's Certificate of Title as security.

The plaintiff also alleges that the 1st Defendant considered the Resolution of the 1st Plaintiff before it advanced the loan.

The plaintiff further alleges that the 1st Plaintiff forwarded the Certificate of Title to the 1st Defendant after retrieving it from one Tenywa to whom the 2nd Defendant owed money.

A copy of the Certificate of Title shows that when the title was retrieved from Tenywa Ahamed on 12th August 2010, it was mortgaged to the 1st Defendant which was registered on 15th September 2010.

These claims draw both Defendants into a web that can only be unraveled by trial. In reaching this position am fortified by a passage by their Lordships in ***El Busaidy v. Commissioner of Lands and Others [2002] 1 KLR 508*** in these words;

“A “preliminary objection” correctly understood, is now well defined as, and declared to be a point of law which must not be blurred with factual details liable to be contested and in any event, to be proved through the process of evidence. Any assertion, which claims to be a preliminary objection, yet it bears factual aspects calling for proof, or seeks to adduce evidence for its authentication, is not as a matter of legal principle, a true preliminary objection which the Court will allow to proceed. Where a Court needs to investigate facts, a matter cannot be raised as a preliminary point.”

In my view the plaintiff raises a lot of facts to be contested calling for proof and adducing of evidence all of which removes the matter from the arena of preliminary objection.

The 1st and 2nd Defendants have in their objections submitted many disputed facts which stand to be tested yet anything purporting to be a preliminary objection must not deal with disputed facts.

The Plaintiffs claim give rise to questions that can only be resolved with the participation of the Defendants since they are leveled at them as the parties that deprived the Plaintiffs of a right they ought to enjoy.

In conclusion, the Court finds real questions to be responded to by the two objecting Defendants.

The preliminary objections are therefore disallowed with costs to abide the final decision.

Dated at Kampala this 12th day of July 2018.

**HON. JUSTICE DAVID WANGUTUSI
JUDGE**