

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(LAND DIVISION)
CIVIL SUIT NO.187 OF 2019

5 **WABWIRE CHARLES:.....PLAINTIFF**

VERSUS

KAZOORA ROBERT:.....DEFENDANT

Before: Hon. Lady Justice Alexandra Nkonge.

RULING ON PRELIMINARY OBJECTIONS.

10 The plaintiff brought this suit against the defendant for trespass on an unregistered *kibanja*; a declaration that the plaintiff is the registered proprietor of the suit land; a permanent injunction; special and general damages; as well as costs of the suit.

In his written statement of defence, the defendant denied liability and pleaded that he has been wrongly dragged to court and prayed that the suit be dismissed at the earliest stage.

15 The defendant also raised 3 preliminary objections to the effect that;

1. *The subject matter of the suit land is so small that it is not a proper case for the High Court.*

2. *The suit discloses no cause of action against the defendant.*

20 3. *The suit is filed against the wrong defendant.*

Issues for determination.

The objections raised the following issues for determination by this court:

- 25 1. ***Whether the suit is properly before the High Court.***
2. ***Whether the suit discloses a cause of action***
3. ***Whether the suit is against the wrong party.***



Consideration of the issues:

I have carefully read and considered the arguments raised in the submissions of both parties, details of which are on the court record.

Issue No. 1: Whether the suit is properly before the High Court.

5 The defendant counsel submitted that the plaintiff pleaded that cause of action is trespass to the *kibanja* which was purchased in 2015 and that the sale agreement attached to the pleadings however reveals that the purchase price was **Ugx. 5,500,000/=** only.

That considering that the land is unregistered and contains maize, beans and bananas, the gross value of which must be less than **Ugx. 50,000,000/=**, it does not justify filing the suit in the
10 High Court. That **section 208 of the Magistrates Courts Act** provides that a matter should be filed in the court of the lowest grade competent to try and determine it. This section which is to be read together with **section 207 (1)(b) of the Act** places this claim before a Magistrate Grade One, and at most before the Chief Magistrate court.

however in response referred to the unlimited jurisdiction of this court to try all matters as vested
15 in it by **article 139(1) of the Constitution**.

This court as indeed submitted by Counsel for the plaintiff in reply, is seized with both original and appellate jurisdiction as vested in it under **Article 139 (1) of the 1995 Constitution of the Republic of Uganda (as amended)** and **section 14 of the Judicature Act**.

Section 5 of the Civil Procedure Act further gives this court power to try all suits of a civil
20 nature except those which are expressly or impliedly barred by law. Further, in regard to the High Court granting remedies in matters brought before it, **Section 33 of the Judicature Act (supra)** stipulates that;

***The High Court shall, in the exercise of the jurisdiction vested in it by the constitution, this Act or any written law, grant absolutely or on such terms and
25 conditions as it thinks just, all such remedies as any of the parties to a cause or matter is entitled to in respect of any legal or equitable claim properly brought before it.***

See also: David Kayondo v Co-operative Bank Ltd SCCA No.10 of 1991). Such jurisdiction cannot be whittled away.

30 Thus it may be the case as argued by the defendant counsel that the *kibanja* was purchased at **Ugx 5,500,000/=**. But be that as it may, in *paragraph 5* of the *plaint*, the plaintiff seeks special



damages of **Ugx 30,000,000/=**, as well as an unspecified award in general damages. In paragraph 6 thereof the estimated value of the suit land is more than **Ugx 50,000,000/=**.

It is to be noted that where suit property appears overvalued, the court would not be required to look beyond that as stated in the plaint. The position becomes different only if the suit property is undervalued, which does not seem to apply to this case. In such situation, the plaintiff may be asked by court to correct the valuation within the specified time.

Indeed a court must reject the plaint where the plaintiff fails to do so. Court must also reject the plaint in any other instance where it would appear that the plaint is barred by law. (**Order 7 rule 11(a) and (e) of the Civil Procedure Rules**).

Similarly, a lower court may find itself in a position where it must entertain a matter with a possibility arising of awarding damages which may however exceed its jurisdiction. In the case of **Joseph Kalinamire vs Godfrey Mugulusi Civil Suit No. MMEK 10 of 2000 unreported**, court citing the case of **Mubiru and others vs Kagiwa 1979 HCB 212** declared that such resultant order would be a nullity. To avoid such scenario a party would save resources by filing the case in a court with the jurisdiction to award such damages.

Therefore given the fact that this court in any case can entertain any matter of any monetary value, I would respectfully disagree with the defendant's first objection. The main suit is therefore properly before this court which is vested with the powers to grant any such remedies that the parties may be entitled to.

This preliminary point of law is therefore overruled.

Issue No. 2: Whether the suit discloses a cause of action

The second objection is to the effect that the suit discloses no cause of action against the defendant.

A cause of action is defined as every fact which is material to be proved to enable the plaintiff succeed or every fact which if denied, the plaintiff must prove in order to obtain a judgment. (**Cooke vs Gull LR 8E.P 116, Read v Brown 22 QBD P.31**). It is disclosed when it is shown that the plaintiff had a right, and that right was violated, resulting in damage and the defendant is liable. This position has been reiterated in the Supreme Court decision of **Tororo Cement Co. Ltd v Frokina International Limited SCCA No.2 of 2001**.

The question of whether a plaint discloses a cause of action must be determined upon perusal of the plaint alone together with anything attached so as to form part of it. **See; Kebirungi v Road Trainers Ltd & 2 others [2008] HCB 72, Kapeka Coffee Works Ltd v NPART CACA No.3 of 2000**.

In the present case, the plaintiff pleaded in *paragraph 4* of the plaint that he is the owner of a *kibanja* situated at Bujjumba LC1, Gombe Sub County, Tikkalu Parish Wakiso District (hereinafter referred to as the 'suit *kibanja*') having purchased the same in 2015.

5 That he used the suit *kibanja* as a farm and that on *25th August, 2018*, he received a call from Lukoda Nicodemus informing him that the defendant had instructed someone to excavate the suit *kibanja*.

That there is an eminent threat by the defendant to take over the suit land through his actions of excavating the suit land and hindering the plaintiff from accessing the land by fencing the same off.

10 It is settled that a cause of action arises when a right of the plaintiff is affected by the defendant's acts or omissions. (***See: Elly B. Mugabi v Nyanza Textiles Industries Ltd [1992-1993] HCB 227***).

15 Therefore, by the defendant allegedly fencing off and ordering the excavation of the suit *kibanja*, this would on the face of it imply that those actions adversely affected the plaintiff's interest in the suit *kibanja*.

In his submission, counsel for the defendant contends that there is no evidence that Lukoda Nicodemus and Katongole Abdalla who sold the *kibanja* to the plaintiff were tenants by occupancy within the meaning of ***Section 31 of the Land Act***.

20 Furthermore that the plaintiff lacks consent of the registered owners as required under ***Section 34 (1) & (3) of the land Act***. Counsel further submitted that the registered proprietor of the land is *Heif Group Ltd* and not the late Earnest Sajjabi as reflected in the plaintiff's purchase agreement.

25 The issues on the acquisition and ownership of the suit property as raised in this application and others including the question as to whether or not the sellers are tenants by occupancy and whether or not the plaintiff obtained the consent of the registered owner, are all in my view triable matters, which would require parties to adduce evidence during the trial.

In the final result, the 2nd objection also fails.

Issue No. 3: Whether the suit is against the wrong party.

30 It is trite that a plaintiff is *dominus litis* which means that he or she has the right to choose who to sue and from whom he/she knows and/or believes he/she will have a remedy against. (***See: M/s Emmaus Foundation Limited & others v M/s Emmaus Foundation Investments (U) Limited & Anor Miscellaneous Application No. 615 of 2019***).



The final decision regarding this objection also therefore awaits a full trial.

Costs awarded to the plaintiff.

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.....
Alexandra Nkonge Rugadya
Judge

10 **18th March, 2021.**

Order delivered by email : 18/3/2021 .