

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL SUIT NO. 420 OF 2008

SAMUEL M. KIZITO

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PLAINTIFF

VS

1. NAKASONGOLA DISTRICT

LOCAL GOVERNMENT

2. THE ATTORNEY GENERAL

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.....
}

DEFENDANTS

RULING BY HON. MR. JUSTICE JOSEPH MURANGIRA

The plaintiff Samuel M. Kizito, through Twesigye &Co. Advocates, brought the above mentioned Civil suit against the defendants, jointly and severally for trespass and encroachment on his land Block 22, Folio 9, LRV 2509, Plots 5 and 6, Bululi, Nakasongola, claiming special and general damages, interest thereof, costs of the suit, a permanent injunction, mesne profits and vacant possession. The defendants did not file a defence to the plaint as required by law.

On 2nd March, 2009, Counsel for the plaintiff M/s Twesigye & Co. Advocates applied to this Court for judgment to be entered in favour of the plaintiff against the 1st defendant. On 9th March, 2009, the Deputy Registrar of this court entered judgment against the 1st defendant according to Order 9 rule 6 of the Civil Procedure Rules. On 20th April 2009 the Deputy Registrar of this court entered the Decree as shown herebelow:-

DECREE

**This matter coming up for final disposal before the Deputy Registrar,
His Worship John Eudes Keitirima in the absence of counsel.**

It is hereby decreed that:

- 1. The 1st defendant delivers vacant possession of the encroached land to the plaintiff.**

2. **A permanent injunction is granted against further encroachment on the plaintiff's land.**
3. **The 1st defendant pays the sum of Uganda Shillings 10, 000,000/= being special damages for loss of 10 acres of land.**
4. **The 1st defendant pays the sum of Uganda Shillings 51,000,000/= being mesne profits at the rate of Uganda Shillings 1,000,000, per month from 2004 to-date.**
5. **The 1st defendant to pay interest at 30% per annum on all monetary awards from 2004 to-date.**
6. **The 1st defendant pays costs of the suit.**

Given under my hand and the Court seal this 20th day of April, 2009

DEPUTY REGISTRAR

On 16th October, 2009, when the suit came up for conferencing interparties, counsel for the defendants raised a preliminary objection that they were not served with the court process. That the record shows that the orders against the 1st defendant were granted by court and extracted. Counsel for the plaintiffs reacting to the objections raised, submitted that since the Statutory Notice was not served on to the 2nd defendant, the suit could be withdrawn from the 2nd defendant. He prayed that each party bears its own costs. The learned State Attorney, Mr. Geoffrey Madete insisted that the suit ought to be withdrawn from both parties since they are sued jointly. He, too, prayed for costs of the withdrawal of the suit. Mr. Kabagambe John Counsel for the plaintiff concede that the suit was instituted against 2nd defendant before a Statutory Notice was served on to the Attorney General as required by law.

The Statutory Notice under section 2 of the Civil Procedure and Limitation (Miscellaneous Provisions) Act, Cap.72 is a legal requirement. Wherefore, since it was not served on the Attorney General the suit against the 2nd defendant is a nullity. It should be noted that once a nullity is always a nullity. Therefore, there is nothing to withdraw by counsel for the plaintiff.

The court's finding is that this suit against 2nd defendant is nullity, yet the suit was brought against two parties jointly and/or severally. Then what is the fate of the plaintiff's suit against the 1st defendant. Here we should draw a distinction between a suit jointly filed against two or more parties and a cause of action filed jointly against two or more parties. In my view, the cause of action filed jointly against two or more parties can survive, against the remaining party(ies) when a cause of action is struck out against or withdrawn from some of them. However, when a suit jointly brought against two or more parties is declared a nullity, such suit cannot survive as against any party.

In the instant suit, the civil suit No.420 of 2008 against the Attorney General is barred by law, the entire pleadings in the plaint are a nullity. Such a plaint ought to be struck out by the court against the plaintiff.

Furthermore, on the evaluation of the submissions of both parties and the pleadings in the plaint, it came evidently clear that the cause of action against the two defendants arose in 2004 (see paragraphs 5 (a), 7 (ii), 8(ii), (iii) and 11 (d) of the plaint). The period between the plaintiff's action arose up to a time this suit was filed in 2008, was a period of over four (4) years. Yet, according to section 3 of the Civil Procedure and Limitation (Miscellaneous Provisions) Act, Cap.72, the plaintiff's actions against the 1st and the 2nd defendants should have arisen within 2 years from the time the tort of trespass is alleged to have committed by the defendants. The cause of action is therefore time barred. Section 3 (1) thereof reads:

Section 3 (1); No action founded on tort shall be brought against-

- (a) the government;
- (b) a local authority; or

(c) a scheduled corporation;

after the expiration of two years from the date on which the cause of action arose.

In the result, agree with Counsel for the defendants that this suit cannot survive as against the 1st defendant only. Accordingly, the suit is dismissed with costs against the plaintiff. The judgment and the decree that were passed against the 1st defendant, to say the least, were irregularly granted and issued by the Deputy Registrar of this court. They, too, are nullities and accordingly, they are set aside.

Dated at Kampala this 21st day of October, 2009

MURANGIRA JOSEPH
JUDGE