

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT FORT PORTAL

CIVIL SUIT NO. 0027 OF 2019

PROF. ARTHUR GAKWANDI PLAINTIFF

VERSUS

CHINA RAILWAY NO. 3 ENGINEERING CO. LTD DEFENDANT

BEFORE: HON. JUSTICE VINCENT WAGONA

JUDGMENT

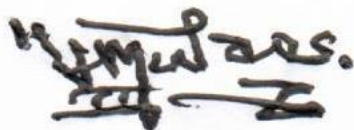
Introduction:

The plaintiff sued the defendant for recovery of shs 118,152,503/= as special damages, general and punitive damages and costs of the suit arising from the damage caused to his house by the defendant's activities of stone quarrying at Kinyamwenge, Hima Town Council, Kasese District.

The case of the Plaintiff:

It was the case of the plaintiff that he is the registered proprietor of land comprised in Plot 17, Bunyangabo, Block 84 developed with a house. In 2018, the defendant commenced road construction works and carried out stone blasting at Kinyamwenge, Hima Town Council, Kasese District near the plaintiff's house.

That the defendant employed heavy machines which caused damage to the plaintiff's house. The plaintiff engaged the services of a valuer who assessed the damage at shs



118,152,503/= while the defendant's valuer assessed the damage at shs 54,290,000/=.

3 That the plaintiff engaged the defendant who failed to pay the amount of shs 118,152,503/=. He thus sought to recover shs 118,152,503/= as special damages, shs 1,000,000/= as the cost of valuation and transport expenses and meals of shs
6 1,600,000/=.

The case of the Defendant:

The defendant denied causing any damage to the plaintiff's house. The plaintiff's
9 house was beyond the 500 meter mark from the defendant's quarry and therefore outside the area designated for persons to be relocated or compensated per the Environment Impact Assessment carried out for Hima – Katunguru Road project. If
12 any, the claim by the plaintiff was exaggerated and baseless.

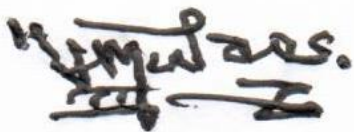
Issues:

At scheduling, three issues were framed for determination thus:

- 15 **1. Whether or not the defendant is responsible for the damage to the plaintiff's property.**
- 2. If so, what is the quantum that should be compensated to the plaintiff?**
- 18 **3. Remedies available to the parties.**

Representation and Hearing:

Mr. Agaba Jadison appeared for the plaintiff. *Mr. Musunguzi Benard* filed the
21 defense for the defendant and represented the defendant; in due course instructions were withdrawn from him and given to *Mr. Masereka C. Chan* who represented the



defendant to the conclusion of the case. Learned counsel addressed me by way of written submissions which I have duly considered.

3 **Resolution:**

Mr. Masereka Chan Godfrey, Learned for the defendant raised a point of law contending among others, that the plaintiff has no cause of action against the defendant, that he lacks the locus standing to present the case at hand and that there are issues of illegality that arise from the case at hand.

Whether the plaintiff has a cause of action against the defendant.

9 **Submissions for the Respondent:**

The plaintiff has no cause of action against the defendant. A cause of action is said to exist if it is disclosed that the plaintiff enjoyed a right, the right was violated resulting into damage and the defendant is liable (*Cooke v Gull LR 8E. P 116; Tororo Cement Co. Ltd v Frokina International Limited, SCCA No. 2 of 2001*). The question whether or not the plaint discloses a cause of action must be determined upon perusal of the plaint alone and the annexure thereto (*Kebirungi v Road Trainers Ltd & 2 others [2008] 1 HCB 72*).

Under order 7 rule 11(a) of the Civil Procedure Rules a plaint may be rejected by court if it does not disclose a cause of action (*Kapeka Coffee Works Ltd v Npart, C.A.C.A No. 3 of 2000*). The plaintiff indicated under paragraph 4 of the plaint that he is the owner of land comprised in plot 17, Bunyangabo Block 84 and the house thereon. During trial, it was discovered that that the plaintiff had by agreement of 9th April 2019 sold the same property to Esau Twebaze of Hima Town Council at a consideration of shs 160,000,000/= where each acre was sold at shs 4,000,000/=.



That under the said agreement, the buyer was to grant the seller (plaintiff) a grace period of 3 months within which to prepare a new home and shift in mid July 2019.

3 The current suit was filed on 31st July 2019 after the suit property had already been sold to Esau and when the plaintiff filed this suit, he did not plead such facts.

The plaintiff had no locus standi to bring the claim at hand. To say that a person has
6 no locus standi means that the person cannot be heard even whether or not he has a case worth listening to (*Njau v City Council of Nairobi [1976-1985] 1 E.A at 407*).

To have locus standi, a claimant must have sufficient interest in the matter to which
9 the claim relates. What constitutes sufficient interest will essentially depend on the co-relation between the matter before Court and the person who is bringing it. In the present suit, the plaintiff claimed that he was the owner of the suit land. However
12 during trial it was established that he had sold the suit land to Esau and thus had no right to sue in the current suit and thus had no locus standi.

The plaintiff having sold the suit land to another person was left with no title in the
15 suit land. The efforts by the plaintiff of tendering documents between him and Esau purporting to cloth him with capacity to sue were a departure from his pleadings. The said facts were not pleaded in the plaint and the rule of pleadings is that a party
18 is bound by his own pleadings. (See: *Order 6 rule 7 of the Civil Procedure Rules and the cases of Jani Properties v Dar es Salaam City Council (1966) E.A 281, Interfreight Forwarders (U) Ltd v East African Development Bank, C.A.C.A No.*
21 *33 of 1992*). The plaintiff pleaded that he was the owner of the suit land which was proved to the contrary. Any effort to lead evidence different from his pleadings is a complete departure from his pleadings which is prohibited by law.



Further, questions of illegality arose in the course of the trial. The plaintiff claimed to be the owner of the suit land which was proved to the contrary. This was confirmed by DW3 who stated in his evidence that the land belonged to Twebaze Tusiime Esau and that the house was on Block 84, Plot 54 which was registered in the names of the said Esau. This was also confirmed by DW4. Once an illegality is brought to the attention of court, the same must be considered first. Courts of law will not enforce an illegal. Where a person invoking the aid of court is implicated in the illegality, courts of law would not come to his assistance and it matters not whether the defendant has pleaded the illegality or not. If the plaintiff proves the illegality, Court ought to assist him. (*Makula International Ltd v His Eminence Emmanuel Nsubuga&anor, C.A.C.A No. 4 of 1982 HCB 11*).

When the plaintiff was recalled to be cross examined, he admitted selling the land to Twebaze Esau. He stated that it was agreed that the title remains in his possession until compensation was paid. These facts were never pleaded yet they were material. The plaintiff in the pleadings claimed ownership of the suit land and the house. As such the plaintiff acted with illegality and with intent to defraud the defendant by pursuing a right of action over property that was never his. This was an illegality that court needs to pronounce itself upon.

Submissions for the Plaintiff:

In *Auto Garage v Motokov [1971] E.A 314*, it was observed that a cause of action is said to exist where the plaintiff proved that he enjoyed a right, the right was violated and the defendant is liable. The plaintiff pleaded that he was the proprietor of the suit land and presented a copy of the title which was admitted as PEXA. This fact was not disputed or challenged by the defendant. The plaintiff led evidence to



prove that he sold part of the suit property to Twebaze Esau and the two made an addendum (PEX1). This evidence was not challenged in cross examination. The defendant does not deny carrying out the road construction and causing damage to the plaintiff's house; the dispute was on the amount to be paid as compensation. This point of law was an afterthought.

The plaintiff gave clear testimony on how he sold part of his land to Esau and not the entire land. The plaintiff remained the registered owner of the suit land and as such there was not departure from the pleadings. The question of illegality is misconceived. It was never in dispute that the plaintiff was the registered proprietor of the suit land and sold 40 acres out of the entire land. As such the claims of illegality have no merit and the points of law should be overruled.

CONSIDERATION BY COURT:

The points of law are centered on four areas: cause of action, locus standi, departure from pleadings and illegality.

The term "*Locus standi*" was defined in *Law society of Kenya v. Commissioner of Lands and others, Civil case no. 464 of 2000*, thus: "*Locus standi signifies a right to be heard, a person must have sufficiency of interest to sustain his standing to sue in court*"

In *Dima Enterprises Poro Vinyani Godfrey, Civil Appeal No. 17 of 2016*, Justice Mubiru described locus standi thus: "*The terms locus standi literally means a place of standing. It means a right to appear in court and conversely to say that a person has no locus standi means that he has no right to appear or be heard in a specified proceeding*"



For any person to have locus standi, such person must have “**sufficient interest**” in respect of the subject matter of a suit, which is constituted by having; an adequate
3 interest, not merely a technical one in the subject matter of the suit; the interest must not be too far removed (or remote); the interest must be actual, not abstract or academic; and the interest must be current, not hypothetical. The requirement of
6 sufficient interest is an important safe-guard to prevent having "busy-bodies" in litigation, with misguided or trivial complaints. If the requirement did not exist, the courts would be flooded and persons harassed by irresponsible suits. (*See: Dima Enterprises Poro v. Inyani Godfrey (supra)*).

Locus standi refers to a vested legal right to file a claim in a court of law so as to entitle a party to the remedies sought in such suit. The import of the doctrine is to
12 enable courts sieve claims of parties and determine whether or not a party before it has interest in the claim that justifies the grant of the reliefs sought. The party before court must show that he or she suffered an injury recognized in law or equity and the
15 aspect of causation or causal link must be in currency save in public interest litigation where such may not be an issue by virtue of article 50 (2) of Constitution of the Republic of Uganda 1995 as amended.

18 In this case the plaintiff pleaded that he is the owner of land comprised in Plot 17, Bunyangabo, Block 84 on which he had a house which was allegedly damaged by the defendant’s works (quarrying). The plaintiff as PW1 in his testimony stated that
21 he is the owner of land comprised in Plot 17, Bunyangabo, Block 84, land at Kilili, Hima Town Council, Kasese District on which he has a house. In cross examination by Mr. Masereka, he stated that he had since sold 40 acres of the land with a house
24 per agreement date **4th April 2019** (DE2). He filed the current suit on **30th July 2019**. He stated that when he recorded his witness statement on **3rd December 2020**, the

A handwritten signature in black ink, appearing to read 'Masereka' with a flourish underneath.

land was still his since he had not transferred; he was waiting for compensation before he could transfer. That they wrote an addendum to the effect that compensation for the damage to the house would go to him and not the buyer. In re-examination, he stated that at the time of making his statement, the title was still in his names. That they had agreed with the buyer that the title would remain in his names until compensation was paid for his house. He stated that they made an addendum on **16th July 2019** (PEX1) saying that he would pursue the compensation for the house.

At locus, PW1 stated that at the time he filed this suit, he had already sold the property. That he sold the house excluding the price for the house. The house was already condemned. PW1 stated that he agreed with the buyer that he would retain the title and pursue compensation for the house separately but this fact is not pleaded in the plaint or in the sale agreement (DE2). It is only stated in the addendum (PEX1) of **16th July 2019**.

Did the plaintiff have locus to present the suit at the time the suit was filed? This question depends on when the suit property passed to the buyer and whether or not the plaintiff remained owner of the same to be clothed with locus to bring this suit against the defendant.

In **R.E. Meggary and H.W.R. Wade** on *The Law of Real Property* (3rdEdn.) at p.582., the authors stated thus:

*“... on completion of a contract of sale of immovable property, property passes to the purchaser, and the vendor holds it as a trustee for the purchaser. The legal title, on the other hand, remains with the vendor until transfer is effected. **The equitable title which passes to the purchaser is considered to be superior to the***



vendor's legal title, which is extinguished on payment of the purchase price by the purchaser. (Emphasis is mine).

3 They further noted thus;

“....from the date of contract the purchaser becomes owner in the eyes of equity (he cannot of course become owner at law until the land is conveyed to him by deed).

6 This equitable ownership is, as has been seen, a proprietary interest enforceable against third parties...” (Emphasis is added).

Further in *Lysaght versus Edwards* [1875] 2 Ch. D. 499, Sir George JesselMR,
9 while considering a similar issue commented thus:

12 “It is that the moment you have a valid contract for sale the vendor becomes in equity a trustee for the purchaser of the estate sold, and the beneficial ownership passes to the purchaser, the vendor having a right to the purchase-money and a right to retain possession of the estate until
15 the purchase-money is paid, in the absence of express contract as to the time of delivering possession.”

18 In the same vein, the Supreme Court in *Ismail Jaffer Allibhai and 2 Others versus Nandlal Harjivan Karia and Another*, Supreme Court Civil Appeal No.53 of 1995 order JSC(RIP) made a fundamental comment on the issue thus:

21
24 “On completion of a contract of sale of immovable property, property passes to the purchaser, and the vendor holds it as a trustee for the purchaser. The legal title, on the other hand, remains with the vendor until transfer is effected. The equitable title which passes

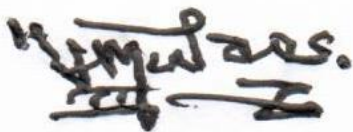
to the purchaser is considered to be superior to the vendor's legal title, which is extinguished on payment of the purchase price by the purchaser”

Further in “The Law of Real Property, by R.E. Megarry and H.W.R. Wade,” at page 582 it is further observed that:

“The principle that property passes to the purchaser at the conclusion of a contract of sale and the vendor becomes a trustee of the purchaser is strengthened by the principle that risks also pass to the purchaser.”

The dominant view is that equitable title in registered property passes to the purchaser immediately the agreed consideration is paid. The legal title remains in the registered proprietor who is at law is deemed to be a mere trustee for the purchaser whose title in the land is terminated by the sale. Once land is sold and the purchaser takes possession, all rights, choses in action and possession vest in the purchaser and not the registered proprietor whose apparent title in the property is for purposes of effecting a transfer.

The plaintiff filed a suit claiming to be the owner of the suit land. However in cross examination, he admitted that he had sold the suit land to Twebaze Esau by virtue of the sales agreement of 4th April 2019 (DE2). In the said agreement, it was agreed between the plaintiff and the said Esau that the buyer (Twebaze Esau) was to grant to the seller a grace period of 3 months to prepare a new home and shift in mid July 2019. In cross examination in court he admitted that he sold the plot with the house to Twebaze Esau and he confirmed the same during locus. He however added that there was an addendum that he would retain the title and



pursue compensation for the damage to his house. PW1 stated in cross examination that plot 17 Block 84 Bunyangabo was subdivided into four plots.

3 That he sold the plot that had the house. I hold that the equitable title to the suit property passed to Esau on 9th April 2019 when the land was sold to him. Therefore, the land with the house did not belong to the plaintiff at the time the
6 suit was filed the same having been sold to Twebaze Esau.

**Having sold, did the plaintiff have sufficient interest in the suit property to
9 file this suit?**

The plaintiff testified that whereas he had sold the suit property to Twebaze Esau, they had executed an addendum (PEX1) where he was to retain the title and
12 pursue compensation for the house. In the pleadings and in the sale agreement however, the plaintiff made no mention of these facts and the subsequent addendum where these facts were contained was not attached. The addendum
15 theory came into play after the plaintiff was cross examined about the sale.

In the sale agreement, it was agreed between the plaintiff and the buyer Esau that
18 the buyer was to grant to the seller a grace period of 3 months to prepare a new home and shift in mid July 2019. The addendum story while being a departure from the pleadings filed by the plaintiff, which is barred under Order 6 rule 7 of
21 the Civil Procedure Rules, tends to prove that the plaintiff at the time of filing had no locus to file this suit.

24 The plaintiff has no cause of action against the defendant since he had no interest in the suit property at the time the suit was filed. He had previously sold the same to another person where the sale agreement (**DE2**) did not mention that he was
27 to retain the title and pursue compensation for the house. *Why was the sale and*

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the conditions of the sale not pleaded? Why were the facts in the addendum not contained in the original sale agreement or pleaded? The foreseeable risk in the

circumstances would be for court to award compensation to the plaintiff and the owner of the property comes up in future to lay similar claims especially as the said Twebaze was not called as a witness to confirm the existence of the transaction in the addendum ((**PEX1**) that the plaintiff was to retain the title and pursue compensation for the house. I therefore agree with the submissions of the learned counsel Masereka that the plaintiff had no locus standi to present this suit. I thus uphold the point of law raised by learned counsel for the defendant in this regard. In the end, I reject the plaint under order 6 rule 11 of the Civil Procedure Rules and consequently dismiss this suit with costs.



Vincent Wagana

High Court Judge

FORTPORTAL

DATE: 05/05/2024

