

UGANDA / JUDGMENT

Capt.Charles v Kamahoro (Miscellaneous Application 6 of 2020) [2024] UGHC 436 (24 May 2024)

[2024] UGHC 436

COURT

High Court of Uganda

BEFORE

Byaruhanga Rugyema, J

CASE / FILE NUMBER

Miscellaneous Application 6 of 2020

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THE REPUBLIC OF UGANDA**IN THE HIGH COURT OF UGANDA AT HOIMA****MISC. APPLICATION NO. 006 OF 2020 (Arising from Civil Suit No. 023 of 2018)****CAPT. JOSEPH CHARLES ROY:..... APPLICANT****VERSUS****KAMAHORO ANASTA:..... RESPONDENT****BEFORE: HON. JUSTICE BYARUHANGA JESSE RUGYEMA****RULING**

- [1] This is an application brought under S.82 CPA, O.46 rr 1 (1) & (b), 4 & 8 CPR for court to review its decision in dismissing Civil Suit No. 23 of 2018 for failure disclose its to cause \$of\$ \$\overline{a}\$ action against the Respondent/Defendant, set aside the dismissal and set down the suit for hearing on its merit.
- [2] The Application is supported by the affidavit of the Applicant/Plaintiff and opposed by the affidavit of the Respondent/Defendant.

Background:

- [3] The Applicant was the Plaintiff in MSD C. S No. 23 of 2018 instituted against the Respondent/Defendant for removal of a caveat allegedly illegally lodged by the Respondent on his plots of land comprised in **Bululi**, Block 69, Plot 11 & 6 at Bugembe.
- [4] The Respondent filed a defence in which she raised a preliminary objection to the effect that the Plaintiff did not disclose a cause of action against her.
- On 19th February, 2020, Court dismissed the Applicant's suit on the ground [5] that the plaint did not disclose a cause of action against the Respondent because the caveat in question was not lodged in her names but in the names of "D & D International Ltd" where the Respondent is the company secretary.
- [6] It is the contention of the Applicant that the dismissal of the suit on ground that the Applicant/Plaintiff did not disclose a cause of action against the Respondent/Defendant is a mistake and an error apparent on the face of the court record which cannot be left to stand. That in its reviewing its decision to dismiss the suit on ground of the suit failing to disclose a cause of action, court was misguided by the Respondent's lawyers who wrongly submitted that the caveat was lodged in the names of "D & D International Ltd" without a certified copy of white page or any certified document.
- [7] Indeed, in her affidavit in reply, the Respondent deponed denying ever registering the caveats in issue on the Applicant's name and contended that the said caveats were registered by "D & D International Ltd" where she was a director and company secretary. That she signed on the caveat document in her capacity as company secretary and as such, she cannot be responsible for the actions of the company.

Issue: Whether there are sufficient grounds for review

The law providing for review is found in S.82 CPA and O,46 CPR. Under [8] \$0.46\$ rr. 1 (1) (a) & (b) CPR, it is provided thus:

"Any person considering himself/or herself aggrieved: -

(a) By, a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or

(b) By, decree or order from which no appeal is hereby allowed and who from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his or her knowledge or could not be produced by him or her at the time when the decree was passed or made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason,

- desires to obtain a review of the decree passed or order made against him or her, may apply for review of judgment to the court which passed the decree or made the order".

- Counsel for the Applicant submitted the major grounds upon which this \$[9]\$ application is anchored, inter-alia, are as follows:
- (1) That there is an error/mistake apparent on the face of the record.
- (2) That there has been a discovery of new and important facts/evidence.
- (3) That there is sufficient reason for reviewing the decision of court.

Error/Mistake apparent on the face of the record:

- [10] Counsel for the Applicant submitted that the Applicant's suit was erroneously dismissed at the instance of the Respondent's lawyers who wrongfully submitted and misguided court that the caveat was lodged in the names of "D & D International Ltd" without a certified copy of the white page or any certified document produced in court in proof of the said allegation. That the Respondent in her Written Statement of Defence (WSD) falsely stated that in order to protect its interests under the concession agreement, "D & D International Ltd" lodged the caveat being complained of and the Respondent/Defendant signed the caveat papers in her capacity as the company secretary of "D & D International Ltd".
 - [11] Counsel for the Respondent on the other hand maintained that the caveat in issue was lodged by the company and the Respondent merely signed the caveat documents in her official capacity as company secretary. That otherwise, the further submissions by Counsel for the Applicant are arguments for appeal and not for review; Mpigi Town Council Vs Jamil Kasuule M. A No.006 of 2016.
 - [12] In the instant case, this court struck out C. S No. 23 of 2018 on the ground that it disclosed no cause of action against the Respondent/Defendant because the caveats the Applicant/Plaintiff sought to vacate in the suit were not lodged by the Respondent/Defendant but by "D & D International Ltd".
- [13] Therefore, to resolve the issue of whether or not there was an error/mistake apparent on the face of the record, this court must first examine whether the suit disclosed a cause of action, i.e. whether the caveats in question were actually lodged by the Respondent/Defendant or by "D & D International Ltd". It is now a settled proposition of law as held in Tororo Cement Co. Ltd Vs Frokina International S. C. C. A No. 08 of 2001 that:

> "A plaint discloses a cause of action if it shows that" the plaintiff enjoyed a right; that a right was violated, and that the violation was by the Defendant(s)".

The Supreme Court in Narottam Bhatia Vs Boutique Shazim Ltd SCC. A No. 16 of 2009, it was held that;

"In determining whether a plaint discloses a cause of action, court must look at the plaint and annexures thereto with an assumption that all facts as pleaded are true"

- [14] It is clear from the above authoritative cases that the question whether a plaintiff 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 and nowhere else, see also *Kapeka Coffee Works Ltd Vs NPART CACA No. 3 of 2000*.
- [15] From the perusal of the plaint on record together with the annexures, it is clear in my view that the plaint discloses a cause of action against the Respondent/Defendant. The instant plaint has annexures of copies of Certificates of title for plots 6 & 11 Bululi, Block 69 and Statements of search in the Land Registry (Marked A-C2) which show encumbrances as "Caveats by Kamahoro Anasta, P. O. Box 2064 Kampala". The caveats were lodged under Instrument Nos. 83727 and 85732 respectively. The assumption is that the annexures are true and genuine. The rest would just be matters of evidence at trial.
- [16] It is therefore apparent that Gadenya J. in striking out C. S No. 23 of 2018 was either misguided by the submissions of Counsel for the Respondent who wrongfully submitted that the caveats were lodged in the names of "D & D International Ltd" as the Applicants' have contended or he wrongfully referred to the Respondent's Written Statement of Defence on which the
- Respondent attached an application for a caveat and its supporting affidavit in the names of "D & D International Ltd" which in my view, would be an error on the part of the judge. In the premises I find that the Applicant/Plaintiff's suit in the instant case accordingly disclosed a cause of action against the Respondent/Defendant. The caveats in question were not in the names of "D & D International Ltd" but in the names of the Respondent/Defendant "Kamahoro Anasta" as was clearly reflected by the Applicants/Plaintiff's pleadings.
- [17] In *Edison Kanyabwera Vs Pastori Tumwebaze S. C. S. A No. 6 of 2004 [2005]2 ULSR 330*, it was held that:

in order that an error may be a ground of review, it must be one apparent on the face of the record, i.e. an evident error which does not require any extraneous matter to show its incorrectness. It must be an error so manifest and clear that no court would permit such an error to remain on the record. The "error" may be one of fact but is not limited to matters of facts, and included also an error law".

- [18] In view of the overwhelming Applicant/Plaintiff's pleadings on record to effect that the caveats in question were lodged by the Respondent/Defendant and not "D & D International Ltd", I find that the order striking out of C. S No. 23 of 2018 on the ground that the caveats in question were filed by "D & D International Ltd" was an error/mistake which is manifest and self-evident requiring no examination or argument to establish it. It was an error of both law and fact. Had the judge looked at the plaint alone, together with its annexures as is the requirement of the law, he would not have struck out the plaint on the ground of nondisclosure of a cause of action.

- [19] On this ground alone, the Applicant is entitled for an order to review the dismissal order and correct it by setting it aside and reinstate the suit accordingly.

Discovery of a new and important evidence:

- [20] Counsel for the Applicant submitted that the Applicant recently obtained certified copies of the white page to his certificate of title in respect of Block 69 Plot 6 and it shows that the caveat was illegally lodged in the names of "Kamahoro Anasta" the Respondent and not "D & D International Ltd".
- [21] In my view, any information regarding the lodging and registration of the said caveat must have always been available in the land registry and should have been obtained prior to the filing of the suit upon anyone exercising due diligence. It cannot therefore be said that there has been a discovery of new and important matter or evidence which after exercise of due diligence, was not within the Applicant's knowledge or could not be produced by him or her at the time when the dismissal order was made. Besides, once the Respondent/Defendant raised a preliminary objection that the Applicant's pleadings did not disclose a cause action, it was improper for court to allow time the Applicant to rectify his pleadings. The Respondent was entitled to a ruling on the preliminary objection regarding whether or not a cause of action had been disclosed against her.
- [22] In conclusion, I find that the Applicant has disclosed sufficient grounds for review of this court's decision dismissing C. S. No. 23/2018. The order is accordingly set aside and the suit would be set down for hearing on its merits. Costs of this application go to the Applicant as the successful litigant.

Order accordingly.

Dated at Hoima this 24th day of May, 2024.

Byaruhanga Jesse Rugyema JUDGE

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Prepared on 13 October 2026 · Esheria