

UGANDA / JUDGMENT

Mukwaya v Bwambale & Another (Civil Suit 13 of 2024) [2024] UGHC 1064 (4 November 2024) [2024] UGHC 1064

COURT

High Court of Uganda

BEFORE

David S.L. Makumbi, J

CASE / FILE NUMBER

Civil Suit 13 of 2024

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KASESE

HCT-25-CV-CS-0013-2024

(FORMERLY FORT PORTAL HCT-25-CV-CS-0022-2019)

MUKWAYA THEMBO LAWRENCE=====PLAINTIFF

VERSUS

1. BWAMBALE JONEN

2. KATARANGYE JAMES ANDREWS=====DEFENDANTS

BEFORE JUSTICE DAVID S. L. MAKUMBI

RULING ON PRELIMINARY OBJECTION:

Representation:

Plaintiff represented by Ngamiye Law Consultants and Advocates

1st and 2nd Defendants represented by Bagyenda & Co. Advocates

Background:

On 24th April 2019, the Plaintiff filed a civil suit against the Defendants by which he claimed:

1. Payment of UGX 60,000,000 being loss and damages.

2. Payment of UGX 2,700,000 paid to the 1st Defendant c/o Bamwanda Bailiffs and Auctioneers.
3. Costs of the Suit.

The facts constituting the Plaintiff's claim are briefly as follows.

On the 18th Day of October 2016, the Plaintiff and the 2nd Defendant entered into a joint venture business for buying and selling coffee wherein the Plaintiff invested UGX 60,000,000 (Sixty Million Uganda Shillings only) and the 2nd Defendant invested 20,000,000 (Twenty Million Uganda Shillings only). This was therefore a total investment amount of UGX 80,000,000 (Eighty Million Uganda Shillings only).

Subsequently the business experienced losses which led to the 2nd Defendant withdrawing from the business.

On 6th June 2017 the 2nd Defendant opened up a criminal case against the Plaintiff for theft which led to the Plaintiff's incarceration on remand for one month. On 28th July 2017, the Plaintiff presented the Joint Venture Business Agreement to Court and he was released.

On 10th November 2017, the 1st Defendant arrested the Plaintiff on grounds that he owed the 2nd Defendant UGX 20,000,000 (Twenty Million Uganda Shillings only). On 14th November 2017 the Plaintiff was committed to civil prison for six months and was released on 14th May 2018.

Upon the Plaintiff's release he discovered that the business was no longer in existence. The 1st Defendant arrested the Plaintiff again on grounds that he owed UGX 3,600,000 despite the Plaintiff having already been in prison before.

The Plaintiff has therefore suffered blatant losses and damages to his business.

The Defendants filed a joint Written Statement of Defence by which they denied the Plaintiff's claim. They further clarified that the Plaintiff did in fact owe them UGX 20,000,000 (Twenty Million Shillings). It was further clarified that the 1st Defendant had arrested the Plaintiff in execution of a warrant on account of money that the Plaintiff owed the 2nd Defendant.

Prior to commencement of the trial Counsel for the Defendants raised three preliminary objections to wit:

1. The suit is time-barred
2. The plaint discloses no cause of action or reasonable cause of action.
3. The suit is frivolous and vexatious

This Court therefore framed issues based on the points above and analyzed them accordingly as follows.

Analysis of the Objections:

Counsel for the Defendants commenced his arguments by pointing out that the 1st Defendant was executing his duties as an Officer of Court when he arrested the Plaintiff on 10th November 2017. To that extent Counsel argued that the 1st Defendant was protected from liability in the execution of his functions by virtue of Section 46(2) of the Judicature Act.

As concerns whether the suit is time-barred, Counsel argued that the suit was filed by the Plaintiff on 24th April 2019 when he was already five months late and that the suit was therefore time-barred by virtue of Section 4 of the Civil Procedure and Limitation (Miscellaneous Provisions) Act*.*

Counsel for the Plaintiff argued in reply for leniency towards the Plaintiff as he had put in his pleadings without the benefit of Counsel and that Counsel had only become involved at the point of submissions on the preliminary objections. Nonetheless Counsel argued that the suit was not time-barred as the Plaintiff was detained from 14th November 2017 until 14th May 2018 and he had then filed his suit on 24th April 2019. Counsel argued that the Plaintiff was under a disability as he was in prison and therefore his suit fell under the provision of Section 5 of the Civil Procedure and Limitation (Miscellaneous Provisions) Act.

I have considered the arguments of both Counsel in this matter and noted that Section 4 of the Civil Procedure and Limitation (Miscellaneous Provisions) Act provides for limitation of actions against public officers.

Section 2 of the Interpretation Act provides that “public officer” has the same meaning as in the Constitution.

Article 175 of the Constitution provides that a public officer means any person holding or acting in an office in the public service. It is further provided thereunder that the public service means service in any civil capacity of the Government the emoluments for which are payable directly from the Consolidated Fund or directly out of monies provided by Parliament.

Given that the pleadings of the Plaintiff do not disclose the capacity in which the warrant was executed I find that this is a matter of evidence which this Court cannot determine at this point in time. I refer to the case of **Kapeka Coffee Works Ltd v NPART – Civil Appeal No. 3 of 2000** by which the Court of Appeal held that in determining whether a plaint discloses a cause of action, the Court must only look at the Plaint and its annexes if any and nowhere else.

Given that the status of the 1st Defendant whether as a public officer or otherwise is not specifically addressed in the Plaint, I find that the issue of whether or not the suit is time-barred cannot be resolved without looking beyond the Plaint into the evidence which is clearly not within the bounds set for determination of preliminary objections or points of law. I accordingly overrule the first preliminary objection.

As concerns the question of the absence of a cause of action Counsel for the Defendants argued that in as much as the Plaintiff's contention concerns both criminal and civil arrest, in the case of the criminal arrest the correct party to sue would have been the Attorney General while in the case of the civil arrest it had been done by the Defendant in capacity of a Court Bailiff executing a court warrant. Counsel further argued that the Plaintiff was silent about the cause of action against the 2nd Defendant.

In response to the above, Counsel for the Plaintiff argued that the fact that the Plaintiff was unrepresented resulted in an unclear expression of facts for which the Plaintiff deserved to be heard in the interests of substantive justice under Article 126(2)(e) of the Constitution.

In considering the question of the cause of action as well as the Plaintiff's plight as an unrepresented litigant, I am alive to the constitutional requirement for substantive justice without undue regard to technicalities pursuant to Article 126(2)(e). This requirement though must be read in the context of substantive justice for both the Plaintiff and Defendant. The balancing act for the Courts when faced with an unrepresented litigant is well laid out the persuasive case of *C Patel v BD Joshi (1952) 19 EACA 42*, where it was held at Pages 43 and 44 that,

"A trial judge should not descend into the arena where his vision may become clouded by the dust of the conflict. Where the parties are represented by counsel, it is preferable that ordinarily, the conduct of the case should remain in their hands. Not to do so might indeed lead to the error of descending into the arena. It is one thing, however, to accept that principle and quite another to argue that, in a civil case, where the conduct of the case is left entirely in the hands of the parties. That is not the law and practice in Kenya. Sometimes, particularly in the backward areas, litigants in a civil case may often appear without counsel. If the hands of the court were tied by some rule that the case should remain entirely in the hands of the parties, the trial of such cases might present great difficulty and the end of justice might be perverted."

It is apparent from the above that while the Court needs to guard against descending into the arena, some leeway must be allowed in deserving circumstances to ensure that the ends of justice are not perverted. To this I add that in considering the pleadings of an unrepresented litigant, it must be done bearing in mind that the litigant is unrepresented but also bearing in mind the need to avoid prejudicing the rights of the opposite party especially with regard to certainty in the preparation of their response to the unrepresented litigant. It is not every pleading of the unrepresented litigant that will be allowed by Court in my view. If the pleadings are such that it is not possible to reasonably deduce the cause(s) of action and create a risk of new cause(s) of action arising during the trial then such pleadings should not be entertained.

In the instant case one can reasonably deduce that the Plaintiff's cause of action against the 1st Defendant arises primarily from Paragraphs 7 and 11 of the Plaintiff's Complaint wherein he takes issue with 1st Defendant arresting him. As concerns the 2nd Defendant the Plaintiff appears to take issue with him over bringing a criminal case against him as per Paragraph 5 of the Plaintiff's Complaint. These causes of action although expressed in layman's terms are in my view sufficient and cannot be deemed to pose a risk of ambush to the Defendants. Indeed from the nature of arguments raised in the

objections the Defendants already seem to have grasped the basics of the Plaintiff's suit.

In my view it is now incumbent upon the Plaintiff to bring forth evidence before Court to demonstrate the merit in his pleadings.

It is on that basis that I overrule the objection that there is no cause of action against the Defendants. The cause of action as disclosed in the Plaint is in my view sufficient for an unrepresented litigant. The merit though is an entirely different matter for which, now that the Plaintiff is duly represented, I would urge caution going forward.

As concerns whether the Plaintiff's case is frivolous and vexatious Counsel for the Defendants basically premised his arguments on the first and second preliminary objections which objections I already overruled and I find no reason to revisit the same. The preliminary objection about the suit being frivolous and vexatious is accordingly overruled for the reasons I have already laid out regarding the previous objections.

DECISION:

The Defendants' preliminary objections are hereby overruled. Costs in this matter shall be in the cause.

DAVID S. L. MAKUMBI

JUDGE

04/11/24

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