

- 1. The plaintiffs' suit in Civil Suit No. 0131 of 2024 be rejected, struck out and or be dismissed for non-disclosure of cause of action.
- 2. costs of the application be provided for.

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The grounds of this application are set out in the application and the affidavit in support sworn by the 1st applicant- Sebukayire Tarsis but briefly are: -

- 1. That the 1st and 2nd respondents are registered proprietors of LRV 1606 Folio 9 Singo Block 788 Plot 31 land at Lubale Estate and LRV HQT663 Folio 13 Buwekula Block 788 Plot 15 land at Lubale estates.
- 2. That annexure 'A' attached to the plaint is a document dated 29th December 2007 which does not in any way refer to the above described land.
- 3. That the plaintiffs falsely state that the 150 acres they bought borders Plots 13,14 and 15 when such numbers never existed by 29/12/2007\$.
- 4. That the plaintiffs alleged to have purchased 50 acres which initially belonged to Wafula the kibanja owner yet the lands belonging to the 1st and 2nd applicants are leases and a kibanja is not held on a lease.
- 5. That Mr. Kalinganire Joseph and Sam John Ntugwensi's interest in Singo Block 788 Plot 16 does not in any way affect the applicants' afore described lands, and the respondents do not have locus to bring the main suit on behalf of Mr. Kalinganire Joseph and Sam John Ntugwensi.
- 6. That annexure 'E1' referred to under paragraph 5 (h) of the plaint is a memo of sale dated 20th January 2011 between Kabagaya Estates Ltd and Sam John Ntugwesi and it concerns Plot 23 Singo Block 788 land at Kabagaya which the 1st and 2nd applicants do not claim interest.
- 7. That Elijah Lutwama could not purport to purchase a kibanja on 7/11/2008 when he already owned it as at 10/10/2008\$.
- 8. That civil suit no. 0131 is frivolous and vexatious, devoid of merit and merely an abuse of court process and ought to be rejected.

The 2nd respondent- Walugembe Enock swore an affidavit in reply stating as hereunder;

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- 1. That the application is misconceived as the plaint clearly illustrates the claim the respondents have against the applicants.

- 2. That the \$1^{st}\$ and \$2^{nd}\$ applicants acknowledge that the respondents have a claim against them by filing a defence and a counterclaim and the 3rd and 4th defendants do not deny the substance of the claims against them.
- 3. That the applicants consented to the grant of a temporary injunction and that the applicants are informed by their lawyers that one of the grounds for grant of a temporary injunction is that the applicants have a plausible case against the respondents before the same is granted.
- 4. That having consented to the temporary injunction, the applicants are estopped from bringing this application.
- 5. That the applicants are raising issues that are supposed to be dealt with in the hearing when all evidence in support of the respondents' claim has been adduced.
- 6. That it is in the interest of justice that this application is dismissed.

Background.

The brief background of this application is that the respondents filed Civil Suit No. 0131 of 2024 against the two applicants, a one Lukwago Stephen (3rd defendant) and Kabagaya Estates Ltd (4th defendant). In that suit the respondents sought among others a declaration that the \$1^{st}\$ and \$2^{nd}\$ respondents are jointly the rightful owners of land comprised in Singo Block 788 Plot 31 and Plot 15 measuring approximately 200 acres and 50 acres respectively, a declaration that the 3rd respondent is the rightful owner of 70 acres of land out of the land comprised in Singo Block 788 Plot 31, a declaration that the 3rd and 4th defendants fraudulently caused the transfer of the suit land and registration of the same to the \$1^{st}\$ and \$2^{nd}\$ applicants. It is from the said suit that the applicants bring this application contending that the plaint filed by the respondents discloses no cause of action against them and thus ought to be struck out.

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application was filed reflecting the 3rd applicant/defendant and \$4^{\rm th}\$ This applicant/defendant as applicants.

However, by letters dated 26.8.2024 and 27.8.2024, counsel for the 3rd and 4th defendants respectively informed court that counsel for the \$1^{st}\$ and \$2^{nd}\$ applicants did not have instructions to file the current application on behalf of the 3rd and 4th applicants. They respectively prayed that the 3rd and 4th applicants be struck off the application.

I do concur with the submissions of both counsel through the letters filed in court on 24.08.2024 and 26.08.2024 that the \$3rd and \$4th applicants were added wrongly and without instructions and they are both struck off this application. No costs awarded in this respect.

Issues for resolution by court are as follows: -

- 1. Whether the applicants are estopped from raising the preliminary point of law based on the principle of approbate and reprobate.
- 2. Whether the plaint in civil suit no. 0131 of 2024 discloses no cause of action against the applicants.
- 3. What remedies are available to the parties?

Representation

The applicants were represented by Mr. Wamimbi Samson of M/S Kajeke, Maguru and Co. Advocates while the respondents were represented by Mr. Kiyaga Stephen of KOB Advocates & Solicitors.

Both parties filed written submissions which have been considered in determination of this application.

Resolution of issues.

1. Whether the applicants are estopped from raising the preliminary point of law based on the principle of approbate and reprobate.

This issue was raised by the learned counsel for the respondents in his submissions. He argued that the applicants consented to the grant of misc. application no 125 of 2024 for the grant of a temporary injunction. That it is a well-known legal principle that before a grant for a temporary injunction is granted, the applicant must prove that he has a prima facie case worthy of a trial by court. That by consenting to the temporary injunction, the applicants impliedly conceded that the respondents have a prima facie case against them and therefore their case has a cause of action. That based on the consent on interim and temporary injunction, the applicants are estopped from saying that the respondents' plaint discloses no cause of action.

The learned counsel for the applicants on the other hand submitted that an order for a temporary injunction is not a judgment and the instant application is not a fresh suit neither is it seeking to challenge any judgment. Further that the applicants have not received any benefits from the temporary injunction to warrant invocation of the maxim of approbation and reprobation.

Analysis by court.

The doctrine of approbate and reprobate is a legal principle that refers to a person or entity taking inconsistent positions in legal proceedings or actions. In other words, a party cannot approve of or benefit from an action in one instance and then disapprove of it in another instance.

In the case of **Ken Group of Companies Ltd V Standard Chartered Bank (U) Ltd** and 2 Ors HCCS NO. 487 OF 2007, the court held that the doctrine of approbation

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and reprobation is based on the doctrine of election that nobody can accept and reject the same instrument and that a party cannot say at one time that a transaction is valid and thereby obtain some advantage from it to which it could only be entitled on the footing that it is valid and then turn around and say it is void for purposes of securing some other advantage.

Interim and temporary injunction orders are granted for purposes of preserving the status quo until the matter to be determined by court is disposed of. Such orders are usually granted on court's discretion until the questions to be investigated in the main suit are finally disposed of.

Although such orders are usually brought by one party and in most cases opposed by the opposite party, an order for an interim or temporary injunction is to the benefit of both parties because it preserves the status quo to the advantage of both parties until final determination of their rights.

A prima facie case for purpose of grant of a temporary injunction does not necessarily mean that there is a valid cause of action. The threshold for a temporary injunction is lower as it only requires showing that there is a serious issue to be tried and not necessarily that the suit is maintainable.

For a cause of action to exist court goes to the heart of whether the suit discloses a legally recognizable claim. If a suit discloses no cause of action, it is bound to fail even if a prima facie case was assumed for the limited purpose of granting a temporary injunction.

Further, it is trite law that a preliminary objection is a point of law which can be raised at any stage in the proceedings capable of disposing of the entire suit once successfully raised. It follows therefore, that no prior action or any form of agreement entered by the parties would override a preliminary objection from being raised at any point.

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To overrule the objection on grounds that the parties had a prior consent would in my view be an illegality. When a party consents to a temporary injunction, they are merely agreeing to maintain the status quo. This does not mean that they have admitted to the existence of a cause of action and neither does agreeing to a temporary injunction confer a direct benefit in a manner that estops one from raising a preliminary objection.

In the circumstances, I find that the applicants are not prevented by the principle of approbation and reprobation in bringing this application.

2. Whether the plaint in civil suit no. 0131 of 2024 discloses a cause of action.

A cause of action means 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 judgment. See: Uganda Aluminium Ltd V Restuta Twinomugisha CACA No. 22 of 2000.\$

Order 7 rule 11 (a) of the CPR provides that a plaint shall be rejected where it does not disclose a cause of action.

In determining whether a plaint discloses a cause of action or not, the court must look only at the plaint and its annexures. See: Kapeka Coffee Works Ltd V NPART CACA No. 3 of 2000.

The decision in Tororo Cement Co. Ltd V Frokina International Ltd; Civil Appeal No. 21 of 2001 laid down the three essential elements to support of a cause of action:

- 1. the plaintiff enjoyed a right;
- 2. the right has been violated;
- 3. the defendant is liable;

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I have carefully perused the plaint in civil suit no. 0131 of 2024. The plaintiffs (now respondents) filed the suit and in paragraph 4 of the plaint contended that the applicants purchased the suit land from the \$3rd\$ and \$4th\$ defendants fraudulently and have since been registered as proprietors. They laid down particulars of fraud against each of the four defendants in the case.

In paragraph 5 of the plaint, the respondents give facts constituting the cause of action attaching copies of their purchase agreements of the suit land to support their claim. In pleading fraud, the respondents went ahead to particularize the particulars of fraud against the applicants and the participation of each defendant (applicants).

The applicants' case in this application is entirely based on the merits of the case and are leading evidence in their application and submissions to prove that the respondents do not own the suit land. This can only be done through adducing evidence in a full trial. The applicants are confusing proving one's case in trial with disclosing a cause of action by plaint.

Based on the above position, I find that the plaint in civil suit no. 0131 of 2024 discloses a cause of action.

\$Costs\$

According to **Section 27** of the Civil Procedure Act costs follow the event. In this case take I note with concern the conduct of the counsel who filed this application. In my view it was not necessary to bring such an application where the cause of action was obvious. Costs of this application are awarded to the respondent $\mathbf{\$}$.

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3. What remedies are available to the parties?

Having found that the plaint in Civil Suit no. 0131 discloses a cause of action, this application lacks merit and is hereby dismissed.

The costs of this application are awarded to the respondents.

I so order.

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KAREMANI JAMSON, K JUDGE

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Court: Dated, signed and delivered by email this 2nd day of April, 2025

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