

THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA AT KAMPALA
CIVIL APPEAL NO 131 OF 2012

LIMUR LIVESTOCK CO LTD..... APPELLANTS

VERSUS

10 **1. OKONGO JOSEPH**

2. OBWONA AKIBWA

3. LATENG CHARLES

4. OJOK LAWRENCE

5. OPOBO NAPTALI..... RESPONDENTS

15 *[Appeal arising from the judgment of the High Court of Uganda Holden at Gulu delivered by His Lordship Justice Wilson Masalu Musene on the 18th day of May 2012 in HCT-02- CV -CS-0001-2008]*

CORAM: Hon. Mr. Justice Kenneth Kakuru, JA

Hon. Mr. Justice Geoffrey Kiryabwire, JA

Hon. Mr. Justice Christopher Madrama, JA

Judgment of Hon. Justice Kenneth Kakuru, JA

25 This appeal arises from the Judgment of the High Court of Uganda at Gulu *vide* HCT-02-CV-CS-0001-2008 before His Lordship Hon. Mr. Justice Wilson Masalu-Musene dated 18th May 2012.

Background

5 On 8th Jan 2008 the plaintiff instituted a suit against the following defendants at the High Court of Uganda at Gulu.

1. Kitugum District Land Board
2. Pawo Growers Society
3. Okongo Joseph
- 10 4. Obwona Akibwa
5. Lateng Charles
6. Opobo Naptali
7. Ojok Lawrence

15 Paragraph one of the plaint describes the appellant as a Limited Liability Company incorporated under the laws of Uganda.

The claim against the defendants was for recovery of land of approximately 400 hectares at Pawo, Lamwo Kitugum District, permanent injunction, general damages and costs.

20 The defendants denied the claim and filed a counterclaim contending that the appellant had obtained a lease offer fraudulently.

The trial Judge dismissed the appellant's suit and upheld the respondents counterclaim. The appellant being aggrieved by the decision of the trial Court now appeals to this Court on the following grounds:-

- 25 1. *The learned trial Judge erred in law and fact when he held that the suit land did not belong to the Appellant/plaintiff.*
2. *The learned trial Judge erred in law and fact when he held that the Appellant/plaintiff committed fraud in the process of registering the suit land.*

- 5
3. *The trial Judge erred in law and fact when he held that the Respondents/defendants were not trespassers on the suit land.*
 4. *The trial Judge erred in law and fact when he failed to properly evaluate the available evidence on record thereby arriving at a wrong conclusion.*

10 At the hearing of the appeal Mr. Llyod Ocorobiya learned Counsel appeared for the appellant while Mr. Emmanuel Chandia appeared for the respondents.

I am alive to the requirement of the law that, as first appellate Court we have a duty to re-evaluate the evidence adduced at the trial and make our own inferences on all issues of law and fact. *See: Rule 30 (1) of the Rules of this Court and Fr. Narcensio Begumisa & others vs Eric Tibebaaga, Supreme Court Civil Appeal No. 17 of 2002,*
15 *Kifamunte Henry vs Uganda, Supreme Court Criminal Appeal No. 10 of 1997, Bogere Moses vs Uganda Supreme Court Criminal Appeal No. 1 of 1997.*

I have deliberately omitted to reproduce the arguments of Counsel, because I am of the considered opinion that they are largely irrelevant in the determination of this
20 appeal.

The plaintiff is a limited company. The plaint sets out the facts that give rise to the cause of action as follows:-

The facts giving rise to the plaintiff's cause of action are as hereunder:-

- 25
- i. *That on the 20/6/1973 the plaintiff applied for and duly paid stamp duty for land described as rural land on the 1/7/1974, (Annexure B).*
 - ii. *That on the 4/11/1974 an 'INSPECTION REPORT ON THE APPLICATION FOR RURAL LAND' was completed inter alia*
30 *showing that there were no people on the suit land,*

- iii. *That despite due diligence Land Form 2 was not attached with Land Form 4 as required for the completion of registration of the plaintiff's interest. (Annexure C),*
- iv. *That these forms were finally submitted on the 5/5/1976 (Annexure O),*
- v. *That the Secretary Uganda Land Commission acknowledged the receipt of the letter dated 11/8/1986 from the Senior Staff Surveyor Gulu inter alia regarding the plaintiff (Annexure E)*
- vi. *That in 29/3/1988 the plaintiff was given a lease offer upon the terms and conditions therein stated, (Annexure F)*
- vii. *That by a letter dated 3/5/1991 the Commissioner for Lands instructed the Senior Staff Surveyor Gulu to survey "approx 400 hectares at Pawo Lamwo Kitgum" with reference to the plaintiff, (Annexure G)*
- viii. *That on the 23/7/1991 survey Form 13 was completed by the Senior Staff Surveyor (Annexure H)*
- ix. *That because of the insurgency in the northern region the process could not be completed,*
- x. *That the 3rd, 4th, 5th, 6th and 7th defendants with others still unknown decided to encroach on and interfere with the activities' for with the plaintiff was granted the lease,*
- xi. *That lately the 3rd, 4th, 5th, 6th and 7th defendants and others still unknown have become very aggressive and have even injured some of the plaintiffs staff.*

On the other hand paragraphs 8, 9 and 10 of the defendants amended written statement of defence and counter claim stated as follows:-

8) *The defendants shall content that the plaintiff obtained a lease offer over their customary land (Defendant) fraudulently.*

a) *Falsely stating in their application that it was a registered CO. Ltd*

Whereas not.

b) *Failing to inspect the land to obtain objection from customary owners.*

c) *Forging the consent of the members of the Pawor clan.*

d) *Lying to the District Land Board that the suit land was not occupied by any customary tenants.*

9) *By reason whereof the defendant have suffered loss and damages.*

10) *IN THE ALTERNATIVE BUT WITHOUT PREJUDICE to the foregoing the defendants contend and shall aver that both the Application for rural land dated 20th /6/1973 and the Lease Offer granted to the Plaintiff / Applicants LIMUR LIVESTOCK FARM LTD, which was ONLY INCORPORATED and issued with CERTIFICATE OF INCORPORATION as such on 14th day of August 2007 under Certificate No. 92074 are prima facie fictitious and fraudulent. A non existing entity or Company could not be seen to apply and be issued with a lease Offer before its INCORPORATION. (Annexure E & F refers).*

The appellant in its reply to the counterclaim, did not specifically refer to the averments set out in paragraphs 8, 9 and 10 of the counterclaim.

During the trial PW1 Ocen Keceroni testified that:-

5 *In 1973 we applied for our land. We were keeping our heads of cattle, goat and sheep in Limur. We were members of LIMUR LIVESTOCK FARM LTD, the plaintiff.*

10 *In 1973 we applied to District Land Board. We mentioned the areas of the borders of the land.*

I have had Form 2: Application for Rural Land. The same is Exhibit P.2.

15 *The report of inspection found no people on the land. The land was good for agricultural and grazing purposes. The inspection report is exhibit P. 7.*

And application was forwarded to the Uganda Land Commission.

20 *We got from the District Commissioner a copy of a letter dated 05.05.76 forwarding Land Form 2 and had Form 4 to the Principal Commissioner for Land and Surveys, Gulu, P. O. Box 457, Gulu attention Dr. G. MASARA: Exhibit P.4. We got another letter signed by Secretary Uganda Land Commission, P. O Box 7096 Kampala dated 11.08.86: Exhibit P.S.*

25 *Later we got letter from Commissioner of Lands dated 03.05.91 addressed to senior staff surveyor, Gulu, requesting for survey.*

30 *The surveyor was being requested to survey at least 400 hectares of land at Pawor, Limur, Kitgum. We were to pay Shs. 120,000/=*

The letter came together with a lease offer stamped 03.05.91.

5 *The letter dated 11.08.1986, Exhibit P.S. The lease offer: Exhibit P.6, dated 29.03.198.*

As we applied for this rural land we were already keeping over 120 heads of cattle on site, over 15 heads of sheep and about 30 goats.

10 *We were also growing cotton, 10 acres, maize 10 acres, groundnuts 20 acres, millet and sorghum.*

We had bought a motorized and prager in August, 1973.

15 *We registered to have a brand to have numbers on the animals our registration was number 120; and then brand number was R2U*

20 *The Lease Offer given to us in 1988, the. lease according to document we got, we were given 5 years starting from survey, which was never done.*

The survey was not conducted due to insecurity that caused people to run away from the site.

25 *When instructions to survey came out in 1991 insecurity had come.*

From the time when we started applying for land in 1973, there was no complaint up to 2007 when we started hearing complaint from the Kitgum District Land Board that there were some parties interested in the land.

30

5 Our file could not be processed. We were told the names of the groups complaining. Secretary Kitgum District Land Board communicated to us: dated 01.06.07. This is Exhibit D4. The complaint was Pawor Mude Growers Society.

10 We followed the advice of District Land Board and land officer who told us not to work on the piece of land. We have observed this.

We were called for a meeting several times and we responded by attending but Pawor Mudu Growers Society never attended.

15 The meeting never resolved the matter for the Pawor Mudu Grower Society did not come.

On 17.09.07 the District Land Board forwarded the dispute to District Land Office for their Office had failed as per Exhibit D.S.

20 The Land Office never resolved the problem. We decided to sue.

The Plaintiff never used any force whether Police, military or special force at the time.

25 We were 10 members applying. None of us was in force at the time. Nor did we have any relatives in the army or Police

There were also no land disputes at the time.'

In cross examination, the same witness testified as follows:-

30 "On the application form we applied as Limur Livestock Co. Ltd. At that time we were a company in process. We were not yet registered as a company.

5. *I am not a lawyer. I do not know the process how a company registered becomes registered.*

The company was registered in 2007 on 14.08.07, the state of incorporation.

10 *The lease offer was dated March, 1988. The certificate of corporation is Exhibit P.1. The application for Rural Land is Exhibit P.2. that when we applied for land and were given the lease offer we were not yet a legal entity and that this was fraudulent, I say we applied as farmers interested in farming, the legal matters remained with our lawyers. Our lawyers were the ones to deal with the process of registering the*
15 *company...*

"Limited" meant limited to our family. I worked and retired a Senior Assistant Agricultural Officer, Grade I. I retired due to old age.

20 *That we became incorporated 33 years later after applying for the land. I say our lawyer Obol Ochola died and then the file of the company could not be traced.*

25 *But we were on the land and we were working on the land. No act was hidden. Everything was done through Officer of Governments."*

While considering this issue of the regulation of the plaintiff company the learned trial Judge stated as follows at page 24-25 of his Judgment.

30 *Mr. Ocorobia for the Plaintiff urged that whereas the Plaintiff was alleged to have purported to apply for the suit land in 1973 as a registered company, and yet the certificate of incorporation was in 2007, that was not fraud. With the greatest respect for learned Counsel [or the Plaintiff, I cannot see how it is not*

5 fraudulent for one to apply for land as a company in 1973 when there was no
such company, and then register the same in 2007 (over 30 years later).

10 *The question is why did the Plaintiff not incorporate and register the company*
in 1973 before applying for the disputed land as if they were already a
company? There is no doubt whatsoever that those actions of the Plaintiff were
fraudulent.'

It is trite law and that a company being a legal person has separate and distinct
personality from its members. See: *Salomon vs Salomon and Co Ltd [1897] AC 22.*

15 The plaintiff company was incorporated on 14th August 2007 a fact that is not
disputed by the appellant. The appellant company did not therefore exist in 1973
when it purported to apply for the suit land. The lease offer, if I can describe it as
such was made to a non-existent entity. The initial lease of 5 years was also issued
to a non-existent entity.

20 The suit from which this appeal emanates was therefore unsustainable as the facts
giving raise to the cause of action as set out in the plaint and reproduced earlier in
this judgment did not disclose any cause of action against the defendants now
respondents.

25 The learned trial Judge, in view of paragraph 10 of the written Statement of Defence
and counterclaim ought to have tried and determined this issue first. That is
'whether the plaint disclosed a cause of action?' Had he done so he would have
found that the suit was unsustainable as it disclosed no cause of action against the
defendants now respondents.

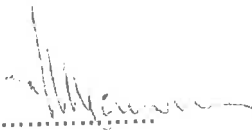
30 I find that a suit that was brought by the appellant on basis of facts that preceded
its existence as set out above, and as such disclosed no cause of action against the

respondents and ought to have been rejected on that account alone under 7 Rule 11 of the Civil Procedure Rules.

Even if the appellant company had been in existence by 1973 I would still have disallowed the appeal and upheld the decision of the trial Judge as I have found no other reason to fault him.

Accordingly this appeal fails and is hereby dismissed with costs to the respondent.

Dated at Kampala this 27th day of November, 2019.



Hon. Kenneth Kakuru
JUSTICE OF APPEAL

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CORAM: Hon. Mr. Justice Kenneth Kakuru, JA

Hon. Mr. Justice Geoffrey Kiryabwire, JA

Hon. Mr. Justice Christopher Madrama, JA

JUDGMENT OF MR. JUSTICE GEOFFREY KIRYABWIRE, JA

I have had the opportunity to read the Judgment of the Hon. Justice Kenneth Kakuru in draft. I agree with it and I have nothing more useful to add.

Dated at Kampala this 27th day of March 2019.



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HON. MR. JUSTICE GEOFFREY KIRYABWIRE

JUSTICE OF APPEAL

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THE REPUBLIC OF UGANDA,
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(Coram: Kakuru, Kiryabwire and Madrama JJA)

LIMUR LIVESTOCK CO LTD}APPELLANT

10

VERSUS

1. OKONGO JOSEPH}

2. OBWONA AKIBWA}

3. LATENG CHARLES}.....RESPONDENT

4. OJOK LAWRENCE}

15

5. OPOBO NATALI}

JUDGMENT OF CHRISTOPHER MADRAMA IZAMA, JA

I have read in draft the judgment of my learned brother Hon. Mr. Justice Kenneth Kakuru, JA.

I concur with the judgment and I nothing useful to add.

20 Dated at Kampala the 27th day of March, 2019


Christopher Madrama Izama

Justice of Appeal