

Africa Community, the Plaintiffs were absorbed in various institutions and departments which included the East Africa Community. The government of the Republic of Uganda undertook to pay the plaintiff's benefits through the East African Community Beneficiaries Association (EACBA). In November 2012, the plaintiffs' photographs appeared in the Daily Monitor, Bukedde and the New Vision as cases of ghost pensioners who had been paid through the defendant bank. After an expensive, long and protracted investigations, the plaintiffs found that UGX. 63,000,000,000/= had been criminally, callously and fraudulently stolen from the former employees of the EAC among whom were the plaintiffs. The plaintiffs also found that the defendant bank had connived with several officers of government to create 1,018 ghost pension beneficiaries who opened up bank accounts on which the said UGX. 63,000,000,000/= was deposited and immediately withdrawn. The plaintiffs discovered that the said 1,018 bank accounts were opened up using pictures and telephone numbers of the alleged account holders which were outright fabrications. Peter Sajjabi had purportedly been appointed by all the 1,018 ghost pensioners to receive their respective amounts from the fraudulent defendant bank. All the paid names through the defendant bank did not have the mandatory pension Form NS7 endorsed by the manager. The defendant bank had fraudulently prepared and submitted the list of ghost pensioners using photographs of the plaintiffs among others to the ministry of Public Service causing the account numbers to be entered into payrolls and formatted into the bank's payment system codes. The fraudulent bank attached fictitious names against the photographs of the plaintiffs. The defendant bank accepted these details, or invented them and forged the

plaintiff's signatures to effect the payments of the ghost pensioners. The plaintiffs lost their benefits, incurred other expenses including transport, detectives and lawyers.

The defendant filed a written statement of defence wherein they denied liability on all the allegations and stated that the defendant was never involved in preparing the list of the pensioners and their details as the lists were prepared by the Ministry of Public Service and Ministry of Finance. The defendant did not forge, intend or accept to forge the plaintiff's signatures, physical addresses and telephone numbers as it acted on details provided by the EACBC. That it did not act fraudulently at all in operating the pension accounts and all pension sums originated from the Ministry of Public Service and Finance and through the Bank of Uganda and the defendant paid out the same in the course of its normal banking duties. All pensioners who were bonafide employees of the defunct East African Community and had made claims for their terminal benefits inclusive of the plaintiffs were paid by government and received their benefits.

The plaintiff was represented by Mr. Asumani Nyonyintono whereas the defendant was represented by Mr. Tom Magezi.

The parties filed scheduling memoranda wherein they each proposed the following issues for determination by this court.

Plaintiffs;

- 1. Whether the plaintiffs are pensioners who were entitled to be paid their benefits through the East African Community Beneficiaries Association?*

2. *Whether the said benefits were fraudulently, criminally or callously stolen?*
3. *Whether the defendant bank facilitated or connived with officials of the East African Community Beneficiaries Association and government leading to the theft of the plaintiff's benefits?*
4. *Whether the plaintiffs are entitled to the prayers sought?*

The Defendant raised the following issues;

1. *Whether the plaintiffs have a cause of action against the defendant.*
2. *If so, whether the defendant acted fraudulently in opening and operating the pensions account.*
3. *Whether the plaintiffs are entitled to any remedy.*

Court set the matter for hearing but it never took off and after several adjournments at the instance of the plaintiffs. Court therefore decided to proceed and determine the matter under Order 17 rule 4.

The defendant was ordered to file its submissions in respect of its preliminary objection on whether the plaint discloses a cause of action.

The defendant accordingly filed the same and so did the plaintiffs.

Both parties' submissions were considered by this court.

PRELIMINARY OBJECTION

Whether the plaint discloses a cause of action.

Submissions

Counsel for the defendant submitted that the suit is not maintainable and arguable. It was stated that the cause of action as stipulated in the pleadings of the plaintiffs is for recovery of unpaid terminal benefits from the defendants. Counsel argued that the cause of action is not sustainable because the plaintiffs were never employees of the defendant and there is no way they can claim unpaid terminal benefits from the defendant, a private entity. It was evidence of the plaintiffs that they were at all material times civil servants of the government of Uganda formerly working in the defunct East African Servants of the government of Uganda formerly working in the defunct East African Community under paragraph 5 (a) of the plaint. It was further stated that the plaintiff did not adduce any evidence to show that they did not receive there pension which was paid to the defendant.

Counsel cited *Auto Garage v Motokov* [1971] E.A 514 where court held that for a case to disclose a cause of action, it must show that the plaintiff a right, the right had been violated and the defendant is liable. He therefore submitted that the suit does not disclose a cause of action against the defendant and should be dismissed with costs.

It is further argued that the plaintiff seek to claim compensation for defamation from the defendant having attached a list and photographs of the alleged pensioners published in the Daily Monitor, Bukedde and New Vision but have not adduced any evidence to show that the publication was by the defendant. Counsel stated that it is trite law that for an action for defamation to arise, the defendant must make the statement to some other person other than the plaintiff, the statement must be a defamatory statement and it must disparage the

reputation of the plaintiff and it is not enough to quote headings or headlines and single sentences complained of.(see Hon. Aridu Ajedra Gabriel v the Red Pepper Ltd Civil Suit of 2016). In this case, the plaintiffs did not adduce any evidence to show that the publication was by the defendant.

In respect of the special damages of transport benefit loss and legal costs, counsel stated that the plaintiffs did not prove this or adduce any documentary evidence to prove this and that the case is a fishing expedition and wastage of court's time. Counsel prayed that it be dismissed with costs.

Plaintiffs' submissions

It was submitted by counsel for the plaintiffs that the basic complaint against the defendant is for fraud which he defined (**See; Fredrick Zabwe v Orient Bank SCCA No. 2006**).

Counsel further stated that the plaintiffs learnt from the newspapers that they were branded ghost pensioners and demonstrate that they were astonished to find their photographs in the defendant bank. That par. 3(j) of the plaint well demonstrated that the defendant bank had connived with several officers of the government to fraudulently create 1,018 ghost bank accounts and the plaintiffs have indicated that they did not participate in opening of the respective bank accounts. Counsel stated that the practice of opening a bank account is that a customer approaches the bank, tenders his identity and signs the relevant documents for account opening and hands over his passport photograph. He further stated that the defendant was under duty to prevent fraud by abstention as none of the plaintiffs was ever approached by the defendant to open up a

bank account. Therefore, the defendant from its acts and omissions fraudulently opened bank accounts without input, consultation of the plaintiffs thus a contract reached by fraud which cannot be enforced.

Counsel therefore prayed that court overrules the objection with costs and a trial direction be given.

Ruling

The learned counsel appearing for the defendant raised a preliminary objection to the plaint in that the plaint did not disclose a cause of action and that the same be rejected and the suit dismissed. He submitted that the plaint averred was that the plaintiffs were never employees of the defendant and there was no way they would claim terminal benefits from the defendant as they were at all times employees of the government of Uganda. He further stated that the plaintiffs did not adduce any evidence to show that they did not receive their pension which was paid to the defendant. I was referred to the case of **Auto Garage vs Motokov (No.3) 1971 EA. P. 514** where it was held that a case to disclose a cause of action must show that; the plaintiff enjoyed a right, the right had been violated and that the defendant is liable and as such the plaint did not disclose a cause of action against the defendant.

Order 7, Rule 11 of the Civil Procedure Rules provides that the court shall reject a plaint which does not disclose a cause of action. Counsel for the plaintiffs stated that the cause of action is stated under para. 4 of the plaint which reads as follows,

“The plaintiff brings this suit to recover general damages, punitive damages, special damages and their unpaid terminal benefits all arising out of the defendant’s criminal, fraudulent, malicious and callous actions.”

This paragraph however does not show what cause of action the plaintiffs have against the defendant in the matter before court.

The provision of order 7 rule 11 (a) is that the plaint shall be rejected where it does not disclose a cause of Action. **In Cottar v Attorney General for Kenya 193 AC P. 18** it was said by **Sir Joseph Sheridan CJ** as he then was

“What is important in considering whether the cause of action is revealed is by the pleadings is the question to what right has been violated. In addition of course the plaintiff must appear as a person aggrieved by the violation of his right and the defendant as a person who is liable, then in my opinion a cause of action has been disclosed and any omission or defect may be put right by amendment. If on the other hand any of those essentials is missing no cause of action has been shown and no amendment is permissible.”

The provision that a plaint shall be rejected appears to be mandatory.(see; **Spry v P in Auto Garage vs Motokov v (Supra) quoting with approval the decision in Hassman vs. National Bank of India**)

To enable a court to reject a plaint on the ground that it discloses no cause of action it should look at the plaint and nothing else. A careful scrutiny of the plaint reveals that the plaintiffs were never employees of the defendant, that they did not attach any evidence to show that the publications made in the

newspapers Bukedde, Daily Monitor and New Vision were actually made by the defendant or any proof that they did not receive terminal benefits.

Applying the principles enunciated above to the instant case, the plaintiffs appear as persons aggrieved by the violation of their rights and for which the defendant is not liable. The plaint shows that they were former employees of the government of Uganda who were entitled to receive terminal benefits from their employer but were astonished to read their details published in widely circulating newspapers; Bukedde, The New Vision and Daily Monitor. It was not established if indeed such publications were made by the defendant. This was a violation of the plaintiffs' right. However, it is the considered opinion of this court that the defendant is not liable and in this way the plaint does not disclose a cause of action. The courts look at nothing but the plaint alone.

From that observation it is the considered opinion of this court that the preliminary objection that the plaint in the instant case discloses no cause of action is upheld, the suit dismissed with costs.

SSEKAANA MUSA

JUDGE

13th March 2020