

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**CIVIL DIVISION**  
**CIVIL SUIT NO. 383 OF 2017**

**1. KISEMBO LUKE WINYI**

**2. KISEMBO ISAAC BAGUMA ::::::::::::::::::::::::::::::::::: PLAINTIFFS**

**3. KISEMBO PHEONAH**

**4. BAGUMA FRANCO**

**(Administrators of the Estate of the Late John Kisémbó)**

**VERSUS**

**NATIONAL FORESTRY AUTHORITY ::::::::::::::::::::::::::::::::::: DEFENDANT**

**BEFORE: HON. JUSTICE SSEKAANA MUSA**

**JUDGMENT**

The Plaintiffs are administrators of the Late John Kisémbó who had brought this suit against the defendant for special damages/compensation for the destroyed/razed forest to a tune of 1,614,009,087/=, general damages, interest and costs of the suit.

The plaintiff alleged that on 9<sup>th</sup> July 2001, the 1<sup>st</sup> defendant issued a permit to the plaintiff to plant, maintain and harvest five (5) hectares of eucalyptus trees on land in Kajjansi Central Forest reserve. The late plaintiff had made only two harvests from the trees he had planted, a group of unknown people who claimed on the land descended/encroached on the land and cut down all the trees the late plaintiff had invested in thus occasioning him loss in billions.

The encroachment, trespass and destruction was brought to the attention of the defendant who either ignored or neglected to take any action to remedy or address the situation.

The late plaintiff through the assurances of good title by the defendant had invested heavily on the land in the terms of tree planting for a number of years but the same was cut down under the watch of the defendant. The late discovered that a freehold title measuring 2.06 hectares was carved out of his 5 (five) hectares piece of land and issued to Nabbanja Victo, Annet Babirye and Mudde Ibrahim a fact which was not disclosed to the late by the defendant at any moment.

The defendant filed a written statement of defence wherein it denied any liability as to the allegations made in the plaint and amended plaint and stated that they shall raise a preliminary point of law to the effect that the Plaintiff has no cause of action against the 1<sup>st</sup> defendant and the suit is barred by law and that the claim is premature, fictitious, vexatious, frivolous and an abuse of court process and prayed it be dismissed with costs.

The defendant contended that the plaintiff acquired a permit from the defendant authority in July 2001 which was for a duration of five years and was meant to expire in July 2006 and there is no record, evidence or proof that the plaintiff ever applied for renewal of that permit or that there has never been any application for renewal of the same that has ever been lodged to the 1<sup>st</sup> defendant.

The defendant contended that the responsibility of protecting the planted trees entirely is for the plaintiff who should have reported the case to police as that was a criminal offence and that the alleged fees to the 1<sup>st</sup> defendant were not for protecting the trees.

The defendant contended that the plaintiff's permit expired in July 2006 and thus the plaintiff no longer has any legal or equitable right over Kajjansi

Central Forest Reserve for the permit expired and in the event that no renewal was made so the land reverted back to the defendant authority.

The 1<sup>st</sup> defendant authority contended that it does not issue certificates of title and did not facilitate or consent to the issuance of the title to the alleged new owners.

The 1<sup>st</sup> defendant therefore contended that there is no illegality by any of them or at all against the plaintiff and the plaintiff suffered no loss, mental torture or otherwise however, if any suffering or loss occasioned to the plaintiff, it was entirely self-inflicted and cannot be imputed on the 1<sup>st</sup> defendant authority.

The parties during a joint scheduling memorandum proposed the following agreed facts, issues for determination by this court.

**Agreed facts;**

1. That the 1<sup>st</sup> defendant issued a permit to the late John Kisembo with respect to the use of the land at Kajjansi Central Forest Reserve.
2. That the late John Kisembo planted eucalyptus trees on the five (5) hectares of the land and the same existed up to the time when they were cut.
3. That the late John Kisembo was up to date in payment of license fees to the defendant.
4. That the late John Kisembo informed the defendant of destruction of his trees by certain people.
5. That the certificate of title which covered part of the forest land was issued to certain people named in the title.
6. That the defendant had or has good title to the land in question.

**Agreed Issues for Court's determination**

1. Whether the plaintiffs have a cause of action against the defendant.

2. Whether the plaintiff's lost interest in Kajjansi Forest Reserve.
3. Whether the plaintiffs' trees were destroyed and if so, whether the defendant is liable for such destruction.
4. Whether the defendant owed the plaintiff a duty of care.
5. Whether the plaintiffs are entitled to any remedies prayed for.

### **Representation**

The plaintiff was represented by *Shonubi, Musoke & Co. Advocates-Kabayo Alex* whereas the defendants were represented by *the Legal Department, National Forestry Authority*.

The parties filed written submissions; all parties accordingly filed the same. All parties' submissions were considered by this court.

### ***Whether the plaintiffs have a cause of action against the defendant***

The plaintiffs' counsel submitted that the suit discloses a cause of action against the defendant. He noted that the plaintiffs' cause of action include; that the late John Kitembo was a permit holder issued by the 1<sup>st</sup> defendant authority in respect of five hectares part of the Kajjansi Forest Reserve, he planted trees on the entire five hectares and in 2014 unknown persons encroached on the land and razed the entire forest, that the plaintiffs' investment in the tree planting was based on the assurance of good title by the 1<sup>st</sup> defendant and the loss occurred due to the 1<sup>st</sup> defendant's failure to act when informed of the destruction.

Counsel for the plaintiffs' relied on *Tororo Cement Co Ltd v Frokina International Ltd Civil Appeal No.2/2001*, where it stated that in order to prove a cause of action, the plaintiff must show that the plaintiff enjoyed a right, that the right has been violated and that the defendant is liable for the violation, and if the three elements are present, a cause of action is disclosed and any defect or omission can be put right by amendment. He also relied on *Kapeka Coffee Works Ltd v NPART CACA No.13/2000*, where Court of

Appeal held that in determining whether a plaint discloses a cause of action, the court must look only at the annexures if any and nowhere else.

He noted that according to paragraph 6(a) of the amended plaint, the plaintiff acquired a permit from the defendant to plant, maintain and harvest 5Ha of eucalyptus trees on land part of Kajjansi Forest Reserve which conferred on him the right to own, harvest and enjoy the proceeds from thereunder. He relied on Section 54 which mandates the 1<sup>st</sup> defendant authority to manage and develop all Central Forests in Uganda and that is inclusive of Kajjansi Central Forest Reserve.

He averred that under paragraph 6 of the plaint, a group of unknown people encroached on the land and cut down all the trees and when the encroachment was brought to the attention of the 1<sup>st</sup> defendant, he omitted to act causing the violation of his right on Kajjansi Forest Reserve due to the 1<sup>st</sup> defendant's failure to take action and intervene in the situation.

The defendants' counsel in regards to cause of action, he submitted that Order 7, Rule 11 (a) of Civil Procedure Act provides that the plaint shall be rejected where it does not disclose a cause of action. Like the plaintiff, counsel relied on *Auto Garage vs Motokov (supra)* for the essential ingredients to sustain a cause of action. He submitted that the plaint falls short of the test as it does not demonstrate the right it enjoyed on either defendant, which rights were violated and the defendants being liable.

In regards to whether the plaintiff has a right, counsel directed this court to paragraph 5 of the written statement of defence which states that the plaintiff no longer has any legal or equitable right over Kajjansi Central Forest Reserve for the permit had expired and the land reverted back to the 1<sup>st</sup> defendant.

He further submitted that permit which was granted to the plaintiff by the forest department to maintain a woodlot on 5Ha for five years from February 28<sup>th</sup> 2001 to 27<sup>th</sup> February 2006, expired in 2006 and the plaintiff

did not apply for renewal of the permit like he did in 2001, therefore the permit having expired, the plaintiff enjoyed no right as to Kajjansi Forest Reserve.

He further submitted that the defendant is not liable for the violation of a non-existent right at the time of the destruction and therefore the plaintiff's case does not disclose a cause of action.

### *Analysis*

A cause of action is a factual situation the existence of which entitles one person to obtain from the court a remedy against another person. The phrase has been held from earliest time to include every fact which the defendant would have a right to traverse. Cause of action has also been taken to mean that a particular act of the defendant which gives the plaintiff his cause of complaint, or subject matter or grievance founding the action, not merely the technical cause of action.

The court in the case of *Okot Ayere Olwedo Justin –vs- Attorney General Civil Suit No. 381 of 2005* while relying on *Cooke -vs- Gull LR.8E.P. pg. 116 and Read -Vs- Brown, 22 QBD p.31* noted that a cause of action means every fact which is material to be proved to enable the plaintiff to succeed or every fact which, if denied, the plaintiff must prove in order to obtain judgment.

It is now well established in our jurisdiction that in considering whether or not the plaint discloses a cause of action, the court only considers the pleadings and anything attached thereto. A summary of what constitutes a cause of action and the guidelines courts follow in determining whether a plaint discloses a cause of action was discussed in the Supreme Court decision of *Ismail Serugo vs Kampala City Council Const. Appeal No. 2 of 1998*, where Hon. Justice Mulenga (RIP) noted that a cause of action in a plaint is said to be disclosed if three essential elements are pleaded; namely,

*pleadings (i) of existence of the plaintiff's right, (ii) of violation of that right, and (iii) of the defendant's liability for that violation.*

He further cited the case of *Auto Garage vs Motokov (No. 3) [1971] EA 514 at p.519 D*, where Spry V.P. stated thus;

*"I would summarise the position as I see (it) by saying that if a plaintiff shows that the plaintiff enjoyed a right, that the right has been violated and that the defendant is liable, then in my opinion, a cause of action has been disclosed and any omission or defect may be amended. If on the other hand, any of those essentials is missing, no cause of action has been shown and no amendment is permissible."*

The plaintiffs' counsel contended that the plaintiff had a cause of action since the late John Kitembo still had a licence to plant, maintain and harvest trees in Kajjansi Forest Reserve since he was paying licence fees for the years 2007 to 2015 and that he enjoyed quiet possession until 2014 when the encroachers cut down his trees.

A lis or cause of action is constituted by a bundle of facts which the law recognise as giving the plaintiff a right of action. It is a situation or state of facts which would entitle a party to sustain and give him a right to seek judicial remedy or redress. In the present case, the plaintiffs' claim arose from a permit granted to him as the basis with a specified duration of time between 2001 to 2006.

The plaintiffs' right to sue can only be deduced from the permit issued on 28<sup>th</sup>-02-2001 to 27-02-2006. The said permit was categorical on expiry: *This permit shall expire on 28<sup>th</sup>-02-2006*. Under condition 4 of the permit it was provided; *The permit holder shall on the expiry of this permit surrender it to the issuing authority*. In addition, under Additional Special Conditions-7 provided; *In the event of non-renewal after expiry of this permit or termination by either party, the area and all developments on it shall*

*revert to the Forest Department without compensation to the permit holder.*

The plaintiffs' rights had a time frame and the subsequent payment for the licence fees was never a renewal of the permit as the plaintiffs' counsel contends. The defendant as a public body should only be bound for actions done in compliance with the law. A breach of the law should not found a cause of action which would vest any rights to a party to sue. The said permit was issued under the Forest Act and the plaintiffs' refusal to make an application for renewal extinguished any rights to establish a cause of action against defendant.

It is against the policy of court to allow an illegal act to form the basis of a cause of action. The plaintiffs' alleged cause of action arose after the expiry of the permit and no rights accrued to the plaintiff then and only rights which had accrued during the subsistence of the permit between 2001-2006 that would have been brought against the defendant.

A cause of action should be distinguished from a right of action which means the right to enforce presently a cause of action. A right to action consists in the facts which enable a person to bring a complaint before the court. A right vests when all the facts have occurred which must by law occur in order for the person in question to have the right. Where there is a right there is remedy.

The facts presented by the plaintiffs' do not really disclose or constitute a cause of action against the defendant after the expiry of the permit with no evidence of any attempt to have the same renewed. Where, therefore, a person proposes to bring an action, he should, as a prudent start, search into the substantive law relating to his/her claim for those facts on which the claim can be predicated and ensure that they exist. If they do, then he or she has a cause of action, otherwise he or she has none.



The plaintiffs' action is for compensation and damages for destroyed or razed forest. The defendant is not cited in any wrongdoing apart from contending that he had created a land title out of the part of the forest which the plaintiff was permitted to plant trees. In the case of *Elly B Mugabi vs Nyanza Textiles Industries Limited [1992-1993] HCB 227* court held that a cause of action arises when a right of the plaintiff is affected by the defendant's acts or omissions.

The defendant was not liable for any act or omission although the plaintiffs' counsel contends they are liable for their attendant outcomes of their failure to act. The permit which was granted did not create any obligation on the part of the defendant to protect the plaintiffs' trees but the condition enjoined the plaintiff to responsible for the forest. The alleged titles created on part of the plaintiffs' land was done by the district land board and registrar of titles, which actions are not the responsibility of the defendant. The plaintiff had added persons who acquired the land title and also destroyed or razed his trees but later for reasons best known to himself withdrew the suit against them.

The plaintiffs' had responsibility to protect and keep secure their tree plantations and to report to police in case of any third party actions. No liability is disclosed against the defendant in this matter.

I am not satisfied that the plaint discloses a cause of action against the defendant.

I therefore dismiss this suit with costs to the defendant.

I so Order.

*Ssekaana Musa*

*Judge*

*15<sup>th</sup> September 2023*