

THE REOUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT FORT PORTAL

CIVIL SUIT NO. 006 OF 2018

(CONSOLIDATED WITH CIVIL SUIT NO. 08 OF 2016, CIVIL SUIT
NO. 10 OF 2019 AND MISC APPLICATION NO. 115 OF 2019)

1. MURAMUZI AMUZA

2. ATEGEKA GABRIEL

3. OCAKA TOM

4. KABAHWEZA RITA

5. RUJUMBA MOSES

6. KAMBUGU CAROLYNE

7. SSEKEBA DILISA

8. MURUNGI EZEKIEL

9. KUSEMERERWA JULIUS

10. KIWALA ALTON

11. AHO AGGREY

12. MWESIGWA LAWRENCE

13. TUSIBIRA MISAKI

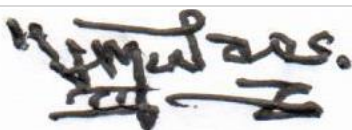
14. ASIIMWE PIUS

15. NAMUYUMBU MARTIN

16. SSERUINAGA TIMON

17. BAKASHABA JULIUS

18. MAWEJJE ERIC



19. AHEEBWA JOHN WALTON::::::::::::::::::::: PLAINTIFFS

VERSUS

3 1. UGANDA ALLIED HEALTH EXAMINATIONS BOARD

2. THE SCHOOL OF GOVERNING COUNCIL OF
FORT PORTAL SCHOOL OF CLINICAL OFFICERS

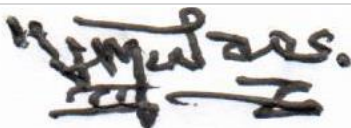
6 3. NASSALI ROSE ::::::::::::::::::::::::::::::: DEFENDANTS

BEFORE: HON. JUSTICE VINCENT WAGONA

RULING

9 This ruling determines the point of law raised by Mr.
Businge A Victor, learned counsel for the 3rd defendant
that the plaint does not disclose a cause of action
12 against the 3rd defendant.

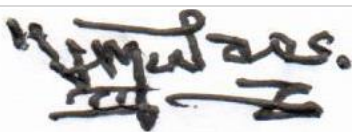
Mr. Businge submitted that in considering whether a plaint
discloses a cause of action or not, reference is made to
15 the plaint and the annexures thereto and nothing more or
less. He invited me to the decision of *Kapeka Coffee Works
Ltd v NPAK, C.A.C.A.No. 3 of 2000* where the said position
18 was laid down. He contended that in the current plaint
apart from mentioning the 3rd defendant's name, the
plaintiffs did not plead the acts of the 3rd defendant
21 that violated their rights to be clothed with a cause of
action against her. He thus asked court to proceed under



Order 7 rule 11 of the Civil Procedure Rules to strike out the plaint as against the 3rd defendant with costs.

3 In reply, Mr. Wahinda Enock, learned counsel for the
plaintiffs contended that a cause of action exists once
it is disclosed that the plaintiff enjoyed a right, the
6 right was violated and the defendant is responsible. He
cited the case of *Ssemakula v Serunjogi, HCCS No. 187 of*
2012 to support his position. That in the current suit,
9 it was pleaded by the plaintiff that the 2nd and 3rd
defendant breached the contract when they discontinued
the plaintiffs acting on provisional results. That the
12 plaintiffs contended that the 3rd defendant subjected them
to disciplinary proceedings before commencement of the
exams. That the plaintiff's right to complete their
15 studies as a result of the discontinuation was partly done
by the 3rd defendant acting as a principal of the 2nd
defendant. He thus insisted that the plaint does disclose
18 a cause of action against the 3rd defendant.

In rejoinder, Mr. Businge contended that the 3rd defendant
was acting as an agent of the 2nd defendant and not
21 connected to the 1st defendant. That she was thus wrongly
dragged in court. He asked court to uphold the point of
law.



Issues:

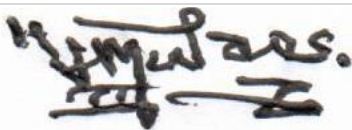
I find one issue at the heart of the point of law being;

3 ***Whether the plaint by the plaintiffs does disclose a cause
of action against the 3rd defendant.***

Consideration by Court:

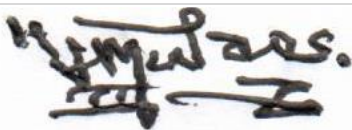
6 It is settled law that for one to satisfy court that he or
she has a cause of action, he or she must show that he or
she enjoyed a right; the right was violated and that the
9 defendant is the one who violated it and as a result of the
violation he suffered loss or damage. (***Tororo Cement Co. Ltd
vs Frokina International Ltd SCCA No. 2 of 2001.***). In the
12 determination of whether or not a plaint discloses a cause
of action, reference must be made to the plaint and the
annexures thereto and nothing else. (***See Kebirungi vs. Road
15 Trainers Ltd & 2 others [2008] HCB 72.***

In the present suit, the plaintiffs suit sought to challenge
18 their dismissal from school on account of the provisional
results which they contend was illegal. They contended that
they were students of Fort Portal School of Clinical
21 Officers under the management of the 2nd defendant and the
3rd defendant was a principal of the 2nd defendant. That they
did exams for the first semester and later started studying



for the second semester. That later results were released in the course of the second semester where a decision was taken by the 2nd defendant to discontinue students who had failed on the basis of the provisional results which were released. They lodged complaints with the school administration headed by the 3rd Respondent as the principal who did not resolve their grievances despite several meetings with the plaintiff. That the defendants acted negligently when they did not ensure that the plaintiff's examination cards were not available before the exam.

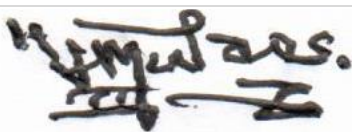
The plaintiffs thus contend that the manner in which the defendants acted breached the contract they entered into with the school at the time of admission. These acts were denied by the 3rd defendant who contended that their actions were within the law and the required education standards. Therefore, a sober consideration of the plaint and the annexure thereon returns the narrative that the plaintiffs have a cause of action against the defendant which is entrenched in negligence. Whether or not their claim is sustainable by the evidence on record against the 3rd defendant is a question of proof on the standard required in civil matters. As guided in DT Dobie & Co (K) Ltd vs Muchina, [1982] KLR, the Court of Appeal it was stated that a *“reasonable cause of action” to mean “an action with some*



chance of success when allegations in the plaint only are considered. A cause of action will not be considered reasonable if it does not state such facts as to support the claim prayer. ...”

Whereas court is vested with powers to strike out a suit for none disclosure of a cause of action under Order 7 rule 11 of the Civil Procedure rules, such power must be exercised carefully and sparingly only in deserving cases where the claim plaint cannot be sustained by the plaintiff against the defendant on any legally acceptable hypothesis. I am persuaded to adopt the reasoning in Crescent Construction Limited vs Kenya Commercial Bank Limited [2019] eKLR, where court observed thus;

“However, one thing remains clear, and that is that the power to strike out a pleading is a discretionary one. It is to be exercised with the greatest care and caution. This comes from the realization that the rules of natural justice require that the court must not drive away any litigant however weak his case may be from the seat of justice. This is a time-honoured legal principle. At the same time, it is unfair to drag a person to the seat of justice when the case purportedly brought against him is a non-starter.”



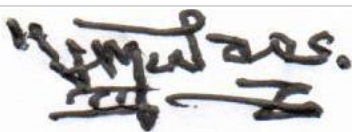
In Yaya Towers Limited vs. Trade Bank Limited (In Liquidation) Civil Appeal No. 35 of 2000 court expressed

itself regarding disclosure of a cause of action thus:

“No suit should be summarily dismissed unless it appears so hopeless that it plainly and obviously discloses no reasonable cause of action and is so weak as to be beyond redemption and incurable by amendment.”

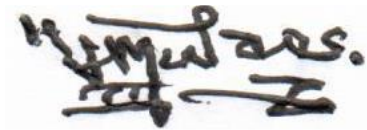
In this case a consideration of the plaint and the annexures thereto indicates that the plaintiffs were unfairly suspended and their grievances were not handled by the school authorities despite several complaints. Whether or not these facts are true is a question of fact subject to proof through a full trial. I am not convinced that the plaintiff's case against the 3rd defendant appears so hopeless that it plainly and obviously discloses no reasonable cause of action and is so weak as to be beyond redemption and incurable by amendment

Further, it is settled law that a point of law should be one whose determination does not require analysis of evidence but should be one which can be seen glaring from the pleadings filed by the parties. In this case, the concern raised by Mr. Businge cannot be determined without considering the evidence of the parties.



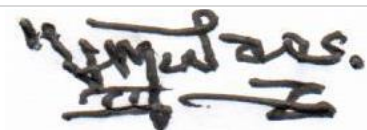
I therefore find no merit in this point of law which is accordingly overruled with costs to the plaintiffs in the cause.

I so order.

A handwritten signature in black ink, appearing to read 'Vincent Wagana', with a stylized flourish underneath.

Vincent Wagana
High Court Judge
FORPORTAL

DATE: 20/08/2024

A handwritten signature in black ink, appearing to read 'Vincent Wagana', with a stylized flourish underneath.