

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**CIVIL DIVISION**  
**CIVIL APPEAL NO. 84 OF 2018**  
**ARISING FROM CIVIL SUIT NO. 595 OF 2017**

**MAYABALA CHARLES** ..... **APPELLANT**

**VERSUS**

**1. NEW VISION PRINTING AND PUBLISHING COMPANY LTD**  
**2. JULIUS SSEBUKOMO** ..... **RESPONDENTS**

**BEFORE: LADY JUSTICE LYDIA MUGAMBE**

**JUDGMENT**

1. This judgment is in Civil Appeal No. 84 of 2018. The Appellant framed 7 grounds of appeal. These are:
  - i. The learned magistrate grade one erred in law and fact when he held that the Appellant's plaint dated 9<sup>th</sup> November 2017 did not disclose a cause of action thereby striking out the same.
  - ii. The learned magistrate erred in law and fact when he failed to acknowledge and find that the Appellant's plaint did disclose particulars of breach of contract.
  - iii. The learned magistrate erred in law and fact when he held that the advertising order did not indicate the full particulars of the contract between the Appellant and the Respondents.

- iv. The learned trial magistrate erred in law and fact when he held that the Appellant's plaint did not disclose how the Respondents were in breach of the contract.
  - v. The learned trial magistrate erred in law and fact when he held that the Appellant's plaint did not disclose a cause of action.
  - vi. The learned trial magistrate erred in law and fact in striking out the Appellant's plaint on a technical preliminary point of law without awaiting to hear and give the Appellant a chance to adduce evidence in support of his case.
  - vii. The learned trial Magistrate erred in law and fact when he struck out the Appellant's plaint without considering the circumstances that gave rise to the Appellant's case.
2. The Appellant prayed that the appeal is allowed, the order striking out the plaint is set aside, the Appellant's suit be reinstated, the suit be heard by another magistrate and costs of the appeal.
  3. The Appellant represented himself and the Respondent was represented by Mr. Ntende Keneth.
  4. Briefly the Respondent herein filed Civil Suit No. 595 of 2017 in the Chief Magistrates Court at Nakawa against the Respondents for (a) a declaration that there was a breach of contract; (b) an apology; (c) general damages of Ug. Shs: 50,000,000/= and (d) costs. The Appellant's cause of action was that sometime in July 2015, the second Respondent approached him and introduced himself to the Appellant as an agent of the first Respondent. He convinced the Appellant to advertise with them and informed him that the Respondents were going to issue a



magazine on the coronation of the Kabaka and the Appellant's advert of his coffee would be run in that magazine. They both agreed that the Appellant would design the advert and the Appellant signed an advertisement order form as a sign of his commitment. The Appellant waited for the second Respondent to come pick the advert but he did not show up. To his surprise, an invoice and a demand letter from the first Respondent were sent to him seeking a payment of Ug. Shs. 490,000/= for an advert run in the Bukedde Newspaper of 31<sup>st</sup> July 2015 with the totally different message than that the Plaintiff intended to put out.

5. In its written statement of defence, the first Respondent generally denied the Appellant's claim and contended that the said amounts remain outstanding as the Plaintiff had never paid for the advertisement. The first Defendant also denied that the publication was a misrepresentation of the Appellant.
6. On 28<sup>th</sup> March 2018, counsel for the first Respondent informed court that they wanted to raise a preliminary objection and he had filed submissions. Court gave timelines to the Appellant to respond and fixed the ruling for 30<sup>th</sup> April 2018. In its written submissions, the first Respondent raised two preliminary objections to wit; that the Appellant did not have locus standi to commence the suit on behalf of Cham Golden Coffee Industry Ltd, a private limited liability company and that the plaint did not disclose any cause of action against the first Respondent in defamation.
7. In his ruling of 30<sup>th</sup> April 2018, His Worship Ssajjabi Norbert Noah the trial Magistrate overruled the first preliminary objection and found that there was no evidence to prove that Cham Golden Coffee Industry was a registered company. He agreed with the Appellant that it was a mere business name. On the second objection, the trial magistrate found that the Appellant's cause of action was for breach of contract and not defamation as stated by counsel for the first Respondent. However he also found that the Appellant did not indicate the particulars of the breach of the contract. The Plaintiff did not indicate what wrong the Respondents committed and gave rise to the cause of action. He therefore found that the plaint did not disclose a





cause of action and struck out the same under order 7 rule 11 of the Civil Procedure Rules with costs. It is this ruling that was appealed.

8. The Supreme Court in **Father Nanensio Begumisa and 3 Ors v. Eric Tiberaga SCCA No. 17 of 2004**, observed that the legal obligation of the first appellate Court is to re - appraise evidence and is founded in common law, rather than rules of procedure. On a first appeal, the parties are entitled to obtain from the Appeal Court its own decision on issues of fact as well as of law. Although in a case of conflicting evidence, the Appeal Court has to make due allowance for the fact that it has never seen or heard the witnesses, it must weigh the conflicting evidence and draw its own inference and conclusions. Also see **FK Zabwe v. Orient bank and others SCCA No. 4 of 2006**.
9. Order 7 rule 1 of the Civil Procedure Rules provides that “The plaint shall contain the following particulars—(a) the name of the court in which the suit is brought; (b) the name, description and place of residence of the plaintiff, and an address for service; (c) the name, description and place of residence of the defendant, so far as they can be ascertained;(d) where the plaintiff or defendant is a minor or person of unsound mind, a statement to that effect; (e) the facts constituting the cause of action and when it arose; (f) the facts showing that the court has jurisdiction; (g) the relief which the plaintiff claims; (h) where the plaintiff has allowed a setoff or relinquished a portion of his or her claim, the amount so allowed or relinquished; and (i) a statement of the value of the subject matter of the suit so far as the case admits.”
10. Order 7 rule 11 of the Civil Procedure Rules provides that “ The plaint shall be rejected in the following cases—(a) where it does not disclose a cause of action; (b) where the relief claimed is undervalued and the plaintiff, on being required by the court to correct the valuation within a time to be fixed by the court, fails to do so; (c) where the relief claimed is properly valued but an insufficient fee has been paid, and the plaintiff, on being required by the court to pay the requisite fee within a time to be fixed by the court, fails to do so; (d) where the suit appears from the statement in the

plaint to be barred by any law;(e) where the suit is shown by the plaint to be frivolous or vexatious.”

11. In **SCCA No. 2 of 2001 Tororo cement Co. Ltd v. Frokina International Ltd**, court found that to establish a cause of action; (1) the plaint must show that the Plaintiff enjoyed a right; (2) the right has been violated; and (c) that the Defendant is liable.

12. In **HCMA No. 2084 of 2016 Ainomugisho Winifred & Ors v. Fatuma Dusto Nalumansi & Ors**, it was held that “the law is that in order to determine if a plaint discloses a cause of action, court looks at the plaint only and nowhere else.”

13. I have considered all the pleadings and submissions of the parties. The contract between the Appellant and Respondents was reduced into writing. This contract was tendered at trial as annexure A, which is the advertising order form which the Appellant signed at the time of contracting the Respondents. There is nothing in annexure A, which is the only document tendered in respect to this contract that suggests that the Appellant was supposed to design the format of his advert which the Respondent agent would then pick up to publish the same in the Kabaka coronation anniversary magazine in issue.

14. Annexure A simply demonstrates that Charm Golden coffee industry (the Appellant’s business) contracted the Respondents to run an advert in the Bukedde print of Kabaka’s coronation anniversary on 31<sup>st</sup> July 2015. Annexure D is the page of the Bukedde newspaper where the advert was run on 31<sup>st</sup> July 2015. A comparison of annexures A and D demonstrates that annexure D was entirely in tandem with the terms in annexure A.

15. If the Appellant so wished to be the one to design the format of his advert, he should have included this as a specific clause in annexure A or some other form of a written agreement binding all parties. Without such specific deduction into writing, it



becomes difficult to believe the Appellant when the Respondents deny such clause having been part of the contract. This is exactly what the trial magistrate found in his assessment of the evidence at trial. I therefore find no error to warrant any variation of the trial judgment to that extent.

16. In my appellate discretion, having observed the Appellant who is a poor senior citizen, it is my considered view that he cannot afford to pay the costs awarded against him at trial. Considering that the first Respondent is a government business entity, to avoid acrimony between the Appellant and the Respondents, I hereby waive and set aside the award of costs and payment of the advert cost of Ug. Shs. 490,000/= (Uganda Shillings Four Hundred Ninety Million) by the Appellant. Each party shall bear its own costs.

I so order.



Lydia Mugambe  
Judge  
21<sup>st</sup> June 2019