

THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT KAMPALA  
(COMMERCIAL COURT)

CIVIL SUIT NO. 416 OF 2001

HANANI MOEZALI ..... PLAINTIFF

VERSUS

MOEZ RAMANI..... DEFENDANT

BEFORE: THE HONOURABLE MR. JUSTICE JAMES OGOOLA

**RULING**

The issue in this instant suit is whether and how a summary suit that includes both liquidated claims and unliquidated claims, may proceed. In particular, must such a suit be struck out altogether, or can the liquidated claims be severed from the unliquidated ones? Subsidiarily, does a Defendant to such a suit waive his right to have the suit struck out by not raising an objection to the suit at the time when he applies for leave to defend?

The contentions of learned counsel for the Plaintiff are clear. He supports both the principle of severability and of waiver. On the other hand learned counsel for the Defendant vigorously challenged all these assertions. He emphasised that the summary procedure is a much specialised procedure which must not be allowed to be abused. Therefore, the Court has no discretion to allow a claim to be brought by summary procedure if the claim is not precisely within the terms of 0.33 r.2 of the Civil Procedure Rules (CPR) — see **Uddham Singh v Ambalal, (1959) EA 67, and UTC v Conte Dela Pasture (1954) 21 EACA 61.**

In the instant case, there is no dispute at all as to the unliquidated nature of the amount of interest that is now claimed. Indeed, learned counsel for the Plaintiff specifically and categorically conceded that the amount of interest, otherwise claimed in the plaint, was and could not be properly claimed under the summary procedure of 0.33 of the CPR. Having considered the written submissions of both counsels, I am of the view that the better course is to judiciously

apply the principle of severability as established in the **Dela Pasture case**. I can see no injustice or unfairness whatsoever where the Court proceeds in a summary manner with respect to the liquidated claims of a Plaintiff, while leaving the ordinary procedure to apply to the unliquidated claim. Accordingly, in the instant case, the amount of rent claimed should be proceeded upon under the summary procedure, while the unliquidated amount of interest could be proceeded upon under the ordinary procedure.

The Plaintiff contended that the Defendant waived his right to have the suit struck out since he did not object to the suit at the time of his own application for leave to defend. That contention is absolutely misconceived. Whether or not the Court can or should strike out a proceeding, is essentially a question of law. No party to the suit has any right to waive a matter of law. Only the Court, exercising its judicial function, has the right to act in that behalf.

In the premises, the Court hereby allows the liquidated claim of Shs.12,750,000/- to proceed under the summary procedure; while the unliquidated claim for interest is to proceed under the ordinary procedure.

In so holding, the Court is wholly cognisant of the fact that once a Defendant is given leave to file a defence in a summary suit, the suit thereupon is, *ipso facto*, transformed into an ordinary suit anyway.

In other words, the summary procedure is valid only as long as the Defendant is denied leave to file a defence to the suit. In the instant case, leave to defend has already been granted by the Court. For all practical purposes therefore, the suit which started as a summary suit, has now become an ordinary suit.

The costs of this application are to be in the cause.

**Ordered accordingly.**

James Ogoola

JUDGE

11/10/02

DELIVERED IN OPEN COURT, BEFORE:

Augustus Sewankambo, Esq. — Counsel for the Plaintiff

J.M. Egetu — Court Clerk

James Ogoola

JUDGE

11/10/02