

**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA**

**COMMERCIAL COURT DIVISION**

HCT-00-CC-MC- 0016-2007

Edward Kakuba Applicant

Versus

Kamukama Steven Respondent No.1

Stanbic Bank Respondent No.2

**BEFORE: THE HONOURABLE MR. JUSTICE FMS EGONDA-NTENDE**

**RULING**

1. In this application the applicant seeks an order of this court directing the respondent no.2 to transfer a sum of Shs.12,000,000.00 from the account of respondent no.1, with the respondent no.2, to the account of the applicant held by the respondent no.2. The applicant further seeks an order that the costs of this application be borne by the respondent no.1. This application, brought by notice of motion, is stated to be brought under Article 139 of the Constitution, Sections 33, 39(1) and (2) of the Judicature Act, Section 98 of the Civil Procedure Act, and Order 52 of the Civil Procedure Rules. It is supported by affidavits sworn by the applicant and one Rajab Kyambadde.

2. The respondent no.1 was served by substituted service but did not appear at the hearing of the application. The respondent no.2 appeared at the hearing of the application and did not oppose the same, though he wondered if the applicant had proceeded correctly.

3. The brief facts so far as they appear on the record are that the applicant, resident in Busia, Eastern Uganda, was receiving agricultural produce from several suppliers from Mityana. The respondent no.1 lived in Mityana, in Central Uganda. He was a friend of the applicant. Both the applicant and the respondent had accounts with the respondent no.2, albeit at different branches. The applicant on several occasions would pay his suppliers in Mityana by depositing the money in Busia on the respondent no.1's account with the respondent no.2. The respondent no.1 would then pass on the money to the suppliers.

4. On the 7<sup>th</sup> June 2007 the applicant deposited on the respondent no.1's account Shs.12,000,000.00 for onward to transmission to one Rajab Kyambadde. After some time Rajab informed the applicant that the respondent no.1 had not passed on the money, and had disappeared. The respondent no.1 was not reachable on his usual mobile phone number. This matter was reported to the police. And now the applicant has come to this court seeking relief.

5. At the hearing of this application I drew the attention of Mr. Nshimye, learned counsel for the applicant that the procedure he had adopted was an unusual way of instituting a suit, contrary

to the procedure established by the Civil Procedure Rules. He responded that that this was a simple case where it was clear that the money on the respondent no.1's account with the respondent no. 2 belonged to the applicant, and the court should use its unlimited jurisdiction to order that it be paid back to the applicant.

6. Section 19 of the Civil Procedure Act provides that every suit shall be instituted in such manner as may be prescribed by rules. The Civil Procedure Rules have an order devoted to institution of suits. Order 4 Rule 1(1) states, 'Every suit shall be instituted by presenting a plaint to the court or such officer as it appoints for this purpose.'

7. The plaint must comply with the requirements set out in Order 6 of the Civil Procedure Rules. It is possible to commence other actions not by plaint, but this must specifically be provided for at law. The approach of the applicant in these proceedings does not comply with any known procedure authorised by law to commence civil proceedings of the nature he has commenced. He has commenced his proceeding by way of notice of motion and wants judgment on the basis of such a proceeding.

8. The applicant has failed to satisfy me that the law authorise an ordinary action for recovery of money to be commenced, proceeded with and concluded in this manner, as though it was an interlocutory matter. The applicant for reasons best known to himself has ignored the express provisions of the law as to institution of suits. Instead the applicant has extensively called in aid provisions of the Constitution, the Judicature Act, the Civil Procedure Act and the Civil Procedure Rules that are not helpful to this cause.

9. I am satisfied that these proceedings are incompetent, and dismiss the same accordingly. I shall not order costs in this matter against the applicant as the respondent no.1 did not appear, and the respondent no.2 did not oppose the proceedings.

Signed, dated and delivered at Kampala this 18<sup>th</sup> day of October 2007

FMS Egonda-Ntende  
Judge

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