

**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA HOLDEN AT FORT PORTAL**

**CIVIL SUIT NO.DR.MFP 38/84**

**ANDEREYA KWEKUBAHO:.....PLAINTIFF**

**VERSUS**

**BAHEMUKA:.....DEFENDANT**

**BEFORE: THE HONOURABLE MR. JUSTICE I. MUKANZA**

**RULING**

When this case was called for hearing the learned counsel representing the defendant raised a preliminary point of law. Mr. Mugamba submitted that the case was not properly before this court because it was not duly registered before this honourable court. A casual look at the record would show that the learned Chief Magistrate His Worship Mr. Kalanda as he then was purported to dismiss the issue of payment of court fees by casually stating that the fees had been paid at Rwebisengo. There is no evidence of such payment nor has there ever been a registrar of this court at Rwebisengo. He referred me to the case of Babizalirwa Francis .vs. Buyanja Tweheyo Co. Ltd H.C.C.S No.1088/88 reported 1989 KALR P.153. Where it was held that no document is properly filed until fees have been paid. The learned judge there quoted with approval the decision in Auto Exports Ltd .V. Customs 1970 EA 648. Mr. Mugamba contended that this Registrar's acknowledgment that fees had been duly paid would offer license to this case to be heard. He submitted that the registrar has got no such latitude. The learned counsel referred me to yet another case. Moro Okola .vs. John Lalobo C.A No.21/1978 reported HCB at. P. 54 where it was held that where contents of letter had been treated as some memorandum of appeal by the Deputy Chief Registrar such treatment was wrong and the letter could not be treated as a memorandum of appeal.

The learned counsel then complained about the behaviour of the Magistrate Grade I when he proceeded and made rulings in the High Court file. That was wrong considering that it was only the Chief Magistrate who is delegated powers by the High Court. He prayed that the case be struck out with costs.

On the other hand Mr. Musana who appeared for the plaintiff submitted that from his perusal of the file it was clear that on 11<sup>th</sup> day of December 1984 the plaintiff in person filed the plaint and the necessary fees were paid at Rwebisengo. That minute was signed on the same day. The plaint was filed and bears stamp of the Chief Magistrate court and that the plaint itself said that the file was filed in the High Court of Uganda at Fort Portal as required under Order 44 Rule 1 of the Civil Procedure Rules. It was therefore not true that no fees were paid because the acknowledgment by the District Registrar showed that fees were paid. He contended however that if the court finds that fees were not paid that was not a mistake on the part of his, client but for the Registrar and his client should not be condemned in costs for the mistake of the District Registrar. He prayed that the preliminary objection be overruled.

I have perused the records of this case very carefully. The present suit was filed in the High Court of Uganda Fort portal pursuant to order 44 rules 1 and 2 of the Civil Procedure rules Cap 65. I reproduce the said rules here below:-

Rule 1:- states that,

*“Every suit in the High Court may be instituted at the central offices situate in Kampala or in District Registry.”*

Rule 2:- is to the effect that,

*“There shall be District Registries of the High Court at such places and for such areas as the Chief Justice may from time to time by statutory order appoint.”*

The powers of the Registrars are provided for under order 46 of the CFR and under rule 3 of the same order it is provided that all formal steps preliminary to the trial and all interlocutory application may be made and taken before the Registrar.

From the provisions of the above law and applying the same to the instant case I have got no doubt in mind that the present case was filed in the court with the requisite jurisdiction. It is however contended by the counsel appearing for the defendant that the suit was not properly filed because no fees had ever been paid.

As I stated earlier on that I took trouble to study the records. The first minute in the file states:-

*“Plaintiff in person files in plaint, necessary fees paid at Rwebisengo”*

It is true that the fees were not shown in the court file and it is also true that there is no registrar at Rwebisengo. I do however take judicial notes of the fact that there exists a grade II Magistrates courts at Rwebisengo and when the learned District Registrar remarked that fees were paid at Rwebisengo and unless there was evidence to the contrary I do not doubt the integrity of the learned District Registrar when he remarked that fees were paid at Rwebisengo. The contention by Mr. Mugamba that no fees were paid at Rwebisengo holds no water. Therefore the cases referred to me by the learned counsel appearing for defence are distinguishable from the instant case.

As regarded his complainant that the Magistrate Grade I gravely erred in entertaining and disposing of certain applications on behalf of the Chief Magistrate/District Registrar, I think that was most unfortunate. I had the occasion to peruse the relevant applications. The learned Grade I Magistrate entertained an application and made an order that the defendant be committed to prison pending his appearance before the District Registrar to show cause why he should not furnish security for his own appearance. The learned Grade I Magistrate also proceeded with the application to review his order. The learned Grade I Magistrate did not have the jurisdiction to act as he did because under order 44 rule 6 all such preliminary steps should have been handled by the District Registrar.

From what has transpired above the preliminary point of law that the case was not properly registered before the court because no fees had been paid and that the same be dismissed is overruled with costs to the Plaintiff.

I. MUKANZA

JUDGE

11/12/91