THE REPBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPAL

MISCELLENEOUS APPL. NO. 37 OF 1993

PERAGIO MUNYAGIRA::::::::::::::::::::::::::::::::::::::::::::::::::::::APPLICANT

VERSUS

ANDREW Y. MUTAYITWAKO::::::::::::::::::::::::::::::::::::::::::::::RESPONDENT

BEFORE: THE HON. MR. JUSTICE G.M. OKELLO

RULING:

This application was brought by Notice of Motion which cited section 18 of the Civil Procedure let s the law under which it was brought. It sought an order of this court to transfer Mengo civil suit No. G.K. 1056/91 from the Chief Magistrate’s court of Mengo to this court for trial. It was based on the ground that:-

"the quantum of damages sought by the applicant exceeds the jurisdiction of the Chief Magistrate’s Court."

The application was supported by an affidavit of Mr. E. Mugabi as counsel duly instructed to handle the case on behalf of the plaintiff.

The back ground of the case is brief. The application was first set down for hearing on 12/5/93. On this date Mr. Mugabi appeared for the applicant and Mr. Nakana Muwayire for the Respon­dent. At the instance of Mr. Muwayire, the hearing of the Appli­cation was adjourned to today 25/5/93 to five Mr. Nakana Muwayire time to study the case. His clerk had not filed the relevant documents in the case. Counsel was fresh documents by counsel for the applicant.

On 26/5/93 when the application was called for hearing, both parties and their counsels were absent, I decided to stand down the case for up 9.30 a.m. hopefully the parties and their counsels would appear. Mugabi appeared at 9.35 when I was waiting an order dismissing the application for non appearance of the applicant. He explained that he delayed receiving judgment from another judge.

In the letters of justice, I allowed Mr. Mugabi to present his application even though the Respondent was absent. This is what Mr. Mugabi said.

“I am applying that the application be allowed and the order be made transferring the case to High Court. That is all”

I must state that this application was in my view handled half-heartedly by counsel for the Applicant.

First, counsels are expected to cite the provisions of the law under which they bring their application to court. Failure to do renders the application defective. This results in the application being dismissed.

In Odongkara vs Kamada (1968) EA 210, the plaintiff applied by notice of motion to amend the plaint by substituting the party but did not cite the rule under which the application was made. The application was dismissed for being defective since it did not specify the rule under which the application was brought.

In the instant case, the application brought the application by notice of motion seeking an order of this court to transfer a civil suit from the magistrates court to the civil procedure Act. The application however did not cite the rule under which the application was brought under action 18 of the CPA. All applications to the court save where otherwise expressly provided for under the civil procedure Rules are brought by notice of motion under 048 r1 of the CPR. This must be cited. On the principle in Odongkara above, this application is defective for failure to cite the rule under which it was brought to court.

Secondly the application was not presented to court. Counsel simply stated that “I am applying that the application be allowed and the order he made transferring the case to the High Court.” that is not enough. Counsel is expected to formally present his application and argued it. This was not done. For the reasons given above, the application must and is hereby dismissed. Since counsel for the Respondent of the Respondent himself did not appear, I make no order as to cost.

G.M OKELLO

JUDGE

27/5/93