

THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT KAMPALA  
CIVIL SUIT NO.459 OF 1993

1. KANONI IMPORTERS & EXPORTERS
2. MRS. LAKI AND 24 OTHERS:.....PLAINTIFF

VERSUS

1. CHATRABHUT LAXMIDAS DALIA
2. ANGLO AFRICAN LTD:.....DEFENDANT

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

RULING:

This is an application for a temporary injunction brought by chamber summons under 0.37 rr 2 (1) and 9 of the CPR. The application was filed sometimes in June 1993. It first came for hearing before Justice Byamugisha on 08/07/93. But at the commencement of the hearing, the matter took a different turn. According to the record of the proceeding before Justice Byamugisha, an affidavit in Reply was filed showing that 17 of the so called Plaintiffs denied that they instructed or authorised the filing of the head suit. This suggested that the head suit was filed without authority at least from those 17. In view of that confusion, the court adjourned the hearing of the application generally to enable counsel for the applicants to sort out things with his client.

In the meantime, during court vacation that followed, the applicants obtained from the Chief Registrar an interim injunction.

This was however later set aside. Then the file was placed before me for hearing of the application. At the commencement of the hearing, it again transpired that the issue of instruction had not been cleared. Mr. Kihiki counsel for the applicants expressed ignorance of what had taken place before Justice Byamugisha. He was not yet engaged in this case. He argued that he was expressly instructed by 15 of



the 26 people who appeared as plaintiffs in the case, to prosecute their case which they transferred to him from Mwesigwa Rukutana.

According to Kihiki, the fact that some of the Plaintiffs have not given him instruction was not detrimental to the application as that defect could be cured by amending the Plaint.

In the alternative, counsel submitted that should the court be of the view that the irregularity in the plaint should first be corrected before the application was heard, then he prayed for an interim order and a date for rectification of the error.

All the above arguments were rejected by Mr. Sekandi. He contended that the issue of instruction was fundamental and must first be sorted out as it affects the suit upon which the application is based. That with such a doubtful suit, even an interim order cannot be made.

Having heard the arguments of both counsels, I am of the view that there exists confusion in the authority to institute the suit. I think this is a fundamental issue as a suit instituted without authority is not valid. The instant suit is instituted in the joint names of 26 plaintiffs. But 17 of them have sworn an affidavit denying giving authority for the suit to be instituted in their names. The explanation by Mr, Kihiki from the Bar that he had been expressly instructed to prosecute the suit does not clear the above confusion. The list he showed the court contained 15 names but not even these have all signed the document. Only 12 of them have signed to say they have authorised Kihika's Firm to prosecute the suit on their behalf. How about the 14 whose name appear as plaintiffs in the case but have not yet instructed Kihiki to prosecute the case or their behalf?

The basis of application for a temporary injunction is the existence of a suit. This means a suit properly instituted. A suit instituted without authority is certainly not a suit properly instituted. In the circumstances until the confusion in this case is cleared, I am unable to even make an interim order. The hearing of the application is therefore adjourned so die to give time to counsel for the applicants to the put things in order.

G.M. OKELLO

JUDGE

22/8/94.

Ruling delivered in the presence of:-

(1) J. Tumushabe Sajjabi & Family for plaintiff/Applicant

(2) and Managing Director of Defendant Co.

(3) Mr. Komakech Court Interpreter.

Ruling delivered.

G.M OKELLO

JUDGE

22/8/94