

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA**  
**AT GULU**  
**MISC. CIVIL APPEAL NO. 4 OF 1996**  
**(ORIGINAL CHIEF MAGISTRATE'S CASE NO.MG .25/92)**

**OPOKA ODWONG..... APPLICANT**

— versus —

**GULU LOCAL GOVERNMENT.....RESPONDENT**

**BEFORE: THE HON. MR. JUSTICE GALDINO MORO OKELLO.**

**RULING**

This application is brought by Chamber Summons under 0. 6 rr. 17 and 18 of the Civil Procedure Rules. The application sought a transfer of civil suit No. MG. 25 of 1992 from the Chief Magistrate's Court Gulu to the High Court. The application is supported by an affidavit dated 30/1/96 deposed to by James Atare as Counsel duly instructed to prosecute the application.

The main ground for the application is that the subject matter of the claim has become above the jurisdiction of the Chief Magistrate's Court. According to Mr. Atare, the Plaintiff/Applicant was claiming his arrears of salaries from the date of his wrongful dismissal by the defendant/Respondent till the date of judgment, Exemplary Damages and Damages for Defamation. Counsel contended that putting the above together, brings the case above the jurisdiction of the Chief Magistrate's Court. He prayed that if the application for a transfer was allowed, he should be allowed to amend the Plaintiff. It was the view of Mr. Atare that application for the transfer would not amount to inconvenience against the Respondent in any form.

No body was present for the Respondent though there was evidence of due service of the Chamber Summons on Counsel for the Respondent. There is affidavit of service dated 25/3/96 to that effect. As there is no explanation from counsel for the respondent as to the reason for his

absence, I allowed counsel for the applicant to proceed *ex parte* to present his application. The application was therefore heard *ex parte*.

It is trite law that every counsel should comply with the rules of court. O. 48 R.1 of the CPR provides that;

“all applications to the court save where otherwise expressly provided for under these rules, shall be by Notice of Motion.”

Transfer of cases from one court to another which this application seeks is a relief which is not provided for under O. 6 rr.17 and 18 of the CPR. It is provided for under section 18 (1) of the Civil Procedure Act. The procedure for bringing the application to court is covered under O. 48 rr 1 of the CPR. By bringing the instant application under O.6 rr17 and 18 of the CPR, the applicant had violated O.48 rr1 of the CPR. This rendered the application improperly before court.

Secondly, citing a wrong rule or failure to cite the law under which an application is brought to court is a defect which results in the application being dismissed. In Odongkara .vs. Kawanda (1968) EA 210, the applicant’s application to amend his plaint was dismissed because he did not specify the rule under which the relief was sought.

On the above principle, this application would be dismissed for citing the wrong rule under which the relief was sought.

Thirdly, the reason for the transfer was stated by counsel for the applicant as lack of jurisdiction of the chief Magistrate’s Court from which the suit was sought to be transferred. Authority available indicate that before a case can be properly transferred from one court to another, the case had in the first instance brought to a court which has jurisdiction. See Kagenyi -vs- Musiramo and Anor (1968) EA 43. From the above principle, it is obvious that the reason given by the applicant in the instant application for the transfer he sought does not justify a transfer. So even if the application was properly before court, it would have not succeeded because the applicant had not produced a strong case to justify the transfer. For the reasons given above, the application must fail. It is therefore dismissed.

.....

Galdino Moro OKello

Judge

1/4/96