

REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
HCT-00-CV-MA-0660 OF 2002

THE HON. MINISTER OF INTERNAL AFFAIRS ::::::::::::::::::::APPLICANT
VERSUS
KAGWA ANDREW:::::::::::::::::: RESPONDENTS
BALIKOWA NIXON
MPOLOGOMA KAGIMU
NANURU OLIVER
SAANO EFRANCE
KYAGABA

BEFORE: THE HONOURABLE MR. JUSTICE FMS EGONDA-NTENDE

RULING

1. The Honourable Minister of Internal Affairs, hereinafter referred to as the applicant, seeks to set aside the ruling of this court, made on 14th October 2002 in Miscellaneous Application No. 0105 of 2002. This application is made under Order 48 of the Civil Procedure Rules and Section 101 of the Civil Procedure Act. The Respondents oppose this application.
2. At the hearing of this application Mr. Badagawa, learned counsel for the Respondents had two preliminary points of law to raise. In order to save time, I decided to take both these points and the main application together. In case I determined that these points were not fatal to the main application I would be able to decide the application soon after disposing of the preliminary points, without the necessity of a further hearing date. I shall now proceed to deal with the two preliminary points of law.
3. Mr. Badagawa submitted that the Notice of Motion was a pleading that had to comply with amended rules of civil procedure that required any pleading to be filed together with a summary of evidence to be adduced in support, a list of witness, a list of documents and a list of authorities to be relied upon. The present application had not complied with this requirement which was

couched in mandatory terms. The failure to comply with it was fatal to the application.

4. Secondly, Mr. Badagawa submitted that this application had been brought under the wrong law, that is Section 101 of the Civil Procedure Act. He stated that Section 101 of the Civil Procedure Act was only to be invoked when there was no rule providing a particular situation. This current situation was provided for under Order 9 Rules 9 or 24 of the Civil Procedure Rules. He referred this court to the cases of:

1. Taparu v Roitei [19681 E.A. 618;

2. Robert Biiso v Tibamwenda 1991 HCB 92 and;

3. Standard Chartered Bank v Clouds 1989/1990 HCB 84.

He prayed that this application be dismissed.

5. Mr. Oluka Henry, the learned State Attorney, who appeared for the Applicant, did not, in his address to this court reply to these preliminary points, when they were raised, and preferred instead to concentrate on the merits of the application.

6. Order VI Rule (1) (a) of the Civil Procedure Rules as amended by The Civil Procedure Amendment Rules, 1998 (S.I. 26 of 1998), provides, “Every pleading shall be accompanied by a brief summary of evidence to be adduced, a list of witnesses, a list of documents and a list of authorities to be relied on: except that an additional list of authorities may be provided later with the leave of court.”

7. I accept the submission of Mr. Badagawa that a notice of motion is a pleading, which is therefore covered by this rule.

8. This rule or provision appears to me to be couched in mandatory terms with the only exception made for an additional list of authorities. The rule, however, does not state the consequences of non-compliance with rule. It appears left to the courts to determine the consequences of non-compliance as the legislature in its wisdom, left the question open. I have not had the benefit of a decision of this court or the appellate courts on the point.

9. Mr. Badagawa referred me to the case of Hasmani v The National Bank of India Ltd. 1937 (IV) EACA 55. In this case the Court of Appeal was considering whether the words, “the plaint shall be rejected.” found in the Civil Procedure Rules of Tanganyika allowed the court discretionary power to reject or not to reject to the plaint. The Court was unanimous in its opinion that it was mandatory and permitted courts no discretion in the matter. This case is far from being on all fours with the case before me. Different provisions are under consideration.

10. In the Hasmani case under consideration was a plaint that did not disclose a cause of action. This makes it much easier to reach the conclusion that it is mandatory for such a plaint to be rejected for it would not have established the necessary elements upon which it is based. The use of the word 'shall' may or may not be mandatory. In the context of this particular provision I am not able to read into it that there is only one inevitable consequence of non-compliance with the rule, and that is rejection of the offending pleading.

11. Nevertheless, if a court is to exercise its discretion not to reject the pleadings filed in violation of the provision, there must be some sort of explanation or reason put forward by the party in default upon which this discretion may be exercised. The Respondent has provided no explanation for non-compliance with the rule.

12. The other preliminary point of law raised by Mr. Badagawa was that this application has been brought under the wrong law. Mr. Badagawa referred to a number of authorities, all of which are to the effect that a party cannot rely on Section 101 of the Civil Procedure Act when there is a course of action provided by the law. See Taparu v Roitei [1968] E.A. 618; Standard Chartered Bank v Clouds 10 Limited [1988-1990] H.C.B. 34; and Robert Biiso v May Tibamwenda [1991] H.C.B. 92.

13. Like with the previous point of law raised by Mr. Badagawa, Mr. Oluka Henry, learned State Attorney for the Respondent chose not to address me on this point.

14. I agree that this application has been brought indeed under the wrong law. The correct provision in this case should have been Order 9 Rule 24 of the Civil Procedure Rules. This Order among, other things, deals with the hearing of suits. For purposes of civil procedure, suits include civil proceedings commenced in any manner. (See Section 2 of the Civil Procedure Act.)

15. The Applicant has chosen not to comply with the law in coming to this court. When challenged or when the objections were raised, the Applicant's Counsel, Mr. Oluka Henry chose not to respond to these objections. In the circumstances I find that either of the above two objections raised by Mr. Badagawa sufficient to dismiss this application with costs. I accordingly dismiss it with costs.

Dated, signed and delivered this 1st day of November 2002

Fredrick Egonda-Ntende, Judge