

REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
HCT-OO-CV-CS-0763 OF 1994
HABRE INTERNATIONAL TRADING CO. (U) LTD:..... PLAINTIFF
VERSUS
KAMPALA CITY COUNCIL :.....DEFENDANT
BEFORE: THE HONOURABLE MR. JUSTICE FMS EGONDA-NTENDE
JUDGEMENT

1. The plaintiff claims to be the owner of plots No. 3779 and 4805, Block 244 situate at Tank Hill, Muyenga within the city of Kampala. At the material time there was partial development of this property. It is alleged that in November 1993, the defendant's employees and servants entered on the said property and demolished one of the structures thereon, valued at shs.35,000,000.00 (Shillings thirty five million) only. The plaintiff seeks to recover the said sum as well as general damages and costs of this suit.

2. The defendant opposes this action and has set up several defences including the claim that its servants or employees have never actually carried out demolition of the structure as alleged by the plaintiff. A number of points of law were raised, and one of them could dispose of this suit, should it prove to be successful. I will start with the same.

3. The defendant claims that this action was drawn and filed by a firm of Advocates, whose sole proprietor did not have a practicing certificate at the time the firm drew, signed and filed the present action in court. By a majority decision in **Professor Syed Huq v The Islamic University of Uganda, Civil Appeal No. 47 of 1995**, the Supreme Court held that documents prepared or filed by an Advocate who did not have a valid practicing certificate at the material time are invalid, and of no legal effect, on the principle that courts will not condone or perpetuate illegalities.

4. The defendant tendered in evidence a certified copy of the list of advocates who had obtained practicing certificates for the year 1994. Mr. Dominic Kasirye was not on this list. The defendant tendered in evidence a certified copy of the certificate of registration of a business name for Kasirye and Company Advocates as well as the particulars registered in respect of Kasirye and Company Advocates. The particulars show that the firm was a sole proprietor with its owner

being Dominic Kasirye.

5. The plaintiff did not adduce any evidence in this regard. In his written submissions to this court the plaintiff's counsel states that these points of law were not raised at the beginning of the trial as they ought to have been. Secondly that at the time the points were raised and supported with evidence the plaintiff had closed its case. It had no opportunity to rebut the evidence in question. Learned counsel for the plaintiff attacked the defence for failing to adduce evidence to show that Dominic Kasirye was the only practitioner in the firm of Kasirye and Company Advocates. He claimed that the question of whether the lawyer who signed the pleadings had a practicing certificate or not remained unsubstantiated.

6. It has been shown by the defence that the firm that filed this suit, Kasirye and Company Advocates was owned by one Dominic Kasirye as sole proprietor. At least this is the only conclusion one can draw from the particulars registered in respect of the said firm. Had there been any changes, notification of change in particulars registered would have had to be filed and the world notified accordingly. In 1994, Mr. Dominic Kasirye did not renew his practicing certificate. In the absence of evidence to the contrary, it is reasonable to infer that the signature purporting to be for Counsel for the Plaintiff is that of Dominic Kasirye, sole proprietor of, Kasirye and Company Advocates, the firm that drew the plaint. In any case it is not in question that Kasirye and Company Advocates prepared and filed the plaint in this suit.

7. It is possible that the firm may have employees who were authorised to practise law, and could sign and present papers to court, among other things. It is only counsel for the plaintiff who would be in a position to show that that is the case. It would be within their exclusive knowledge. Counsel for plaintiff has submitted that he had no opportunity to rebut the evidence of the defence on this point, as it was not raised at the beginning of the proceedings.

8. Of course it is desirable that such points of law, such as this, be raised at the commencement of the proceedings, if for no other reason; to save the public resources and the court's time, as trying such an issue may dispose of the whole suit. Nevertheless even if not raised at that early stage, the court is bound to adjudicate upon it once it is raised. The plaintiff could have applied for leave of court to present evidence in rebuttal. The plaintiff did not make any such application. He cannot now be heard to complain that he had no opportunity to rebut the evidence of the defence on this point.

9. Following the Supreme Court decision in **Professor Syed Huq v The Islamic University in**

Uganda (Supra) (unreported) to the effect that “The documents prepared or filed by such an advocate whose practice is illegal, are invalid and of no legal effect on the principle that Courts will not condone or perpetuate illegalities.” Per Wambuzi CJ, I am left with no alternative in the matter but to declare the plaint filed initially in this case invalid and of no legal effect, as it was prepared by Kasirye and Company Advocates, a firm that did not have a practitioner with a practising certificate.

10. In the result all the subsequent proceedings are incurably defective. I dismiss this suit with costs. It is unnecessary to consider any other issues, as the first one was fully determinative of this suit.

Dated, signed and delivered at Kampala this 12th November 2002.

F.M.S Egonda-Ntende

Judge