

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL DIVISION

CIVIL SUIT NO. 53 OF 2011

HISTORIC RESOURCES CONSERVATION

INITIATIVES & OTHERS :::::::::::::::::::::::::::::::PLAINTIFFS

VERSUS

ATTORNEY GENERAL ::::::::::::::::::::::::::::::: DEFENDANT

BEFORE: HON. JUSTICE ELADAD MWANGUSYA

RULING

On 9.03.2011 the four plaintiffs, namely Historic Resources Conservation Initiatives, Cross Cultural Foundation of Uganda, Historic Buildings Conservation Trust and Jenga Africa filed a suit against the Attorney General seeking among other reliefs a declaration that the proposed demolition of the Uganda Museum and a permanent injunction against the demolition. The Attorney General file a Written Statement of Defence in which he denied that the museum faced demolition. While acknowledging that a project to construct a sixty storey building was in the offing he averred that the project was still in its infancy and Government intended to carry out an environment impact assessment and all the artifacts at the museum would be

protected. Of relevance to this ruling is paragraph 5 of the Written Statement of Defence in which it was averred that the suit was barred in law and should be struck out because the defendant was not served with the Statutory Notice of intention to sue and the plaint did not allude to such service.

A scheduling conference was conducted on 21.04.2011 and after the issues had been framed hearing commenced. The plaintiffs adduced evidence of one witness. The evidence of two other witnesses was adduced on 8.11.2011. the case was then adjourned to 1.12.2011 but no hearing took place. The case was next called for hearing on 18.04.2012 when Ms Peruth Nshemereirwe, State Attorney who had taken over conduct of the defendant's case from another State Attorney informed Court that she was raising a Point of Law which was to the effect that the Attorney General had not been served with a Statutory Notice which was in contravention of Section 2 of the civil Procedure (Misc. Provisions) Act Cap 72 Laws of Uganda. This was in relation to paragraph 5 in the defendant's Written Statement of Defence which despite being raised was not framed as an issue. According to Ms Nshemereirwe a plaint which did not comply with the said provision of the law was bad in law and should be rejected. The submission of Ms Nshemereirwe raises issues relating to the timing of the Preliminary Point of Law and whether the non compliance with the provisions of the said law was fatal to the suit leading to its striking out as prayed in paragraph 5 of the WSD.

Mr. Rwakafuzi Ladslas counsel for the plaintiffs submitted that there was no merit in the Preliminary Point of Law and prayed for its dismissal. He submitted that the suit before Court was not one of those that required a Statutory Notice because the action was brought to enforce certain Constitutional and Cultural rights and that the action was meant to protect the museum which was in danger of being razed and the process of serving a forty five day Statutory Notice would have defeated the purpose for which the suit was meant. He later filed a written presentation in which he raised the issue of the defendant's participation in the proceedings where the issues were agreed but the Preliminary Point was not raised which was an indication that there would be no prejudice to the defendant who had even cross examined the witness that the plaintiffs had presented in support of the suit.

The issues as to whether or not the service of Statutory Notice was a mandatory requirement the failure of which would lead to the rejection of the plaint as prayed by the defendant Attorney General was discussed at length in the case of **PLATFORM FOR LABOUR ACTION AND ANTI CORRUPTION COALITION UGANDA -VS- NATIONAL SOCIAL SECURITY FUND, HIGH COURT CIVIL SUIT NO. 223 OF 2008** (unreported) and the position seems to be that the provision of the law was enacted for a purpose and unless the circumstances of the case warrant a departure a plaintiff has a statutory obligation before instituting a suit to serve the Attorney General with a forty five days written notice and failure to do so would render the suit incompetent. The exceptions discussed in the above judgment drawn from the authority of **DR. RWANYARARE -VS - ATTORNEY GENERAL**

(constitutional Petition No. 3 of 2002) and GREENWATCH -VS - UGAND WILDLIFE AUTHORITY (Misc Application No. 92 of 2004)

both unreported are that where the rights and freedoms of people are being infringed or about to be infringed and there is “need for court to take pre-emptive action in order to prevent or forestall damage from the alleged violations” the requirement of the Statutory Notice cannot apply. In my view if the plaintiffs in this case had served the defendant with the Statutory Notice instead of a plaint alleging a pending demolition of the museum that never was this suit would not have been necessary as the defence of the defendant quashes the fears of a pending demolition of the museum. The action of the plaintiffs did not pre-empt any act of the Attorney General that would have infringed on the rights of the plaintiffs and I would not consider this case to be one of the exceptions where a forty five day Statutory Notice would not be required. The failure of the plaintiffs to serve the Statutory Notice renders the plaint incompetent before this Court and like in the case of **PLATFORM FOR LABOUR ACTION AND ANOTHER -VS- NATIONAL SOCIAL SECURITY FUND** (supra) it is struck out.

On the timing of the Preliminary Point of Law this Court considered the same point in the case of **RUTH ASIIMWE KANYARUJU -VS- HON GRACE NAMARA (Civil Suit No. 198 of 2010)** where a preliminary point was raised after the scheduling conference and counsel for the plaintiff submitted that the preliminary point shall always be raised at the earliest opportunity and not when a case has been called a number of times and a scheduling conference has been completed. He relied on the authority of **NASSAN WASSWA & 9 OTHERS -VS - UGANDA**

RAYON TEXTILES [1982] HCB 137 for that proposition. This Court was of the view that once a preliminary point of law has been pleaded and the hearing of the case has not been concluded it should be resolved any time it is raised otherwise it be futile to proceed with the hearing of the case only to find later on that the proceedings are incurably defective by reason of the preliminary objection that should have been resolved before the conclusion of the trial.

In the circumstances and for the reasons stated I uphold the Preliminary Point of Law raised by counsel for the defendant that the plaint was incompetent before this court and it is ordered that it be struck out.

Eldad Mwangusya

J U D G E

26.04.2012

30/4/2012 AT 3.30 PM

Rwakafuuzi for the plaintiffs

Defendants absent

Clerk - Milton

Court:

Judgment read in open chambers.

Keitirima John Eudes

DEPUTY REGISTRAR

30.04.2012