

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT JINJA

CIVIL SUIT NO. 156 OF 2014

THE REGISTERED TRUSTEES OF THE ARYA

PRATINIDHI SABHA EAST AFRICA ::::::::::::::::::::::::::::::: PLAINTIFF

VERSUS

MUKESH JAIN :::::::::::::::::::::::::::::::::::::::DEFENDANT

RULING

BEFORE HONOURABLE LADY JUSTICE EVA K. LUSWATA

Introduction and background

When the matter came up for hearing on the 27/05/2019, Counsel Malinga for the defendant challenged the manner in which this file ended up in this court. He submitted that the reason, why this matter was transferred here was that the Magistrates Court lacked jurisdiction to entertain the matter. It was his view that the plaintiff should have withdrawn the suit before the Magistrate, and then proceeded to file a fresh suit before this court. He based his arguments on Section 18 (1) CPA and authority that a case can be transferred from one court to another, only if it has been in the first instance, properly and legally filed in a court which has jurisdiction to try it. See: **Kagenyi Vs Musiramo & Anor (1968) EA 43 and Musisi Kibugujju Badman Vs Namakula Zam & The Electoral Commission M/A NO. 303 of 2016.** He prayed for the present suit to be dismissed with costs to the defendant.

In response, counsel Ngobi for the plaintiff submitted that the claim in the Chief Magistrate's Court was for rent, the sum of which at the time the suit was first filed,

fell within the jurisdiction of that Court. That with time, the claim increased to an extent beyond pecuniary jurisdiction of the chief Magistrate.

Beyond the brief oral submissions, both Counsel filed written submissions and a rejoinder was made by the defendant's counsel as directed by court. Reference will be made to those submissions in my ruling.

Submissions of Parties.

In brief, plaintiff's counsel submitted that proof of whether or not a court has pecuniary jurisdiction to entertain the matter, is a question of fact that requires one to adduce evidence. He continued that at the time of filing the suit, the plaintiff's claim was (*inter alia*) rent arrears of less than **UGX 50,000,000/=** and an eviction order, which was within the jurisdiction of the Chief Magistrate. That what prompted the lower court to have the file forwarded to the High Court was the application for security of costs of Shs. **150,000,000/=** which has no bearing on the suit. He concluded with a prayer that if I was to find that the suit is not properly brought before the High Court, an order be made for its re-transmission to the lower court for further management.

In rejoinder, defendant's counsel reiterated his argument that the administrative action initiated by plaintiff's counsel to move the proceedings to the High Court was irregular and illegal. He continued that in **M/A NO.2/2014** (also before the Chief Magistrate), the plaintiff sought orders that the defendant deposits in the Court the sum of **UGX 150,000,000/= (One Hundred Fifty Million Shillings)** as security for any decree that may be passed against him in the main suit. He contended that by implication, that is the sum the plaintiff will seek to recover through litigation from the defendant, and which is way above the pecuniary jurisdiction of the Chief Magistrate. Counsel drew my attention to the affidavit of one Rajni Tailor in support of **M/A NO.2/2014** in which he stated that by 31/12/2013, the defendant owed Shs. **97,012,377/=** in rent arrears, a figure above the pecuniary Jurisdiction of the Chief

Magistrate's court. He continued that when the record was transferred to the High Court, although no new pleadings were filed, it was given a new case file number (**HCCS NO. 156/2014**), a scenario he referred to as a "mixed bag". He reiterated that the suit which was improperly filed before the High Court, cannot be legally transferred to the lower court as proposed.

My Decision

The **Magistrate's Courts Act** as amended by **Act 7 of 2007**, provides as follows:

"Subject to this Act and other written law..... A Chief Magistrate shall have jurisdiction where the subject matter of the dispute does not exceed fifty million shillings and shall have unlimited jurisdiction in disputes relating to conversion, damage to property or trespass".

It is not in contention that this suit was first filed in the Chief Magistrate's Court of Jinja as **Civil Suit No. 12/2012**. The claim was for a declaration of ownership of the suit land, rent arrears, eviction, a permanent injunction, mesne profits and general damages with interest. Neither the pleadings nor the evidence attached indicated a pecuniary sum. The issue of jurisdiction could then be a triable issue and the subject of evidence after the suit commenced. I would in that regard refer to my earlier decision of **Victoria Kayizzi Vs Juma Sewaalinte (Civil Suit No. 438 of 2013)**.

However it is admitted by the plaintiff that on 3/2/2014, they filed Mis Appn No. 02 of 2014 under the same suit, seeking *interalia* for security of costs against the defendant. I disagree with plaintiff's counsel that the application would have no bearing on the main suit. It is an interlocutory matter under the main suit, whose subject matter is the amount of the claim upon which jurisdiction or none of it, can be determined. It is stated in the chamber summons that the plaintiff's claim against the defendant is **UGX 150,000,000/=**. Further in his affidavit in support of the

application, Owekitibwa Rajni Tailor, claiming to be the plaintiff's property coordinator, stated that at as at December 31/12/2013, the rent arrears stood at **UGX 97,012,377/=**. In my view that is the sum the plaintiff intended to claim, a sum that is beyond the jurisdiction of a Chief Magistrate.

In the case of **Mugoya versus Gidudu & Anor (supra)** it was held that:

“A judgment of Court without jurisdiction is a nullity. The orders which follow such a judgment must be set aside ex-debits judicial (as of right). The proceedings and pleadings before the Learned Trial Magistrate were enough for him to investigate the question of jurisdiction and confirm the pecuniary value since it had come in issue”.

Furthermore, **Section 4 of the Civil Procedure Act** provides that;

“Except in so far as is otherwise provided, nothing in this Act, shall operate to give any Court jurisdiction over suits the amount of value of the subject matter of which exceeds the pecuniary limits if any of its ordinary jurisdiction”

I would agree with the above decision that a suit filed in a court without jurisdiction is a nullity. The fact that the court lacked jurisdiction is supported by the plaintiff's pleadings and his counsel's attempt to seek an administrative intervention, would not confer jurisdiction to the Chief Magistrate. The power to transfer suits is vested in the High court under **section 18 CPA**. An order for transfer of a suit from one court to another cannot be made unless the suit has been in the first instance brought to a court which has jurisdiction to try it.

I find that it was improper for the Chief Magistrate to transfer the suit to the High Court, as he did not have jurisdiction in the first place. My decision is supported by the judgment in **Osuna v Ofwono (HCT-04-CV-MA-77-2012) [2013] UGHCCD 113 (12 September 2013)** in which Court found that *“a suit filed in a court which has*

no jurisdiction cannot be transferred from that court’. That legal position is further articulated in **Kagenyi Vs. Misiramo & Ors (Supra)** where it was held that:

“An order for the transfer of a suit from one court to another cannot be made unless the suit has been in the first instance brought to a court which has jurisdiction to try it.”

Counsel for the plaintiff prayed that if court finds that the suit was improperly transferred, the same be sent back to the lower Court. That request is not permissible because the High Court can only exercise its powers of transfer under Section 18 [1] CPA with respect to matters that were properly and legally filed in the correct Court clothed with jurisdiction in the first place. See the decision in **Musisi v Namakula & Anor (M/A NO. 303/2016) [2016] UGHCCD 141 (20 October 2016)**.

The provisions of Section 33 Judicature Act are clear. The High Court can only exercise jurisdiction and grant remedies only in matters properly placed before it in law or equity and the powers of the same Court under Section 98 CPA are limited to meet the ends of justice or prevent abuse of court process.

In conclusion, I find that the transfer of this suit to the High Court by the Chief Magistrate court was irregular. The suit was likewise wrongly filed in this Court. I would move to dismiss it with costs to the defendant.

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EVA K. LUSWATA

JUDGE

5/2/2021