

Hon. Mr. Justice J.W.M. Tsekooko
No Statutory Notice. Mere letter not notice
THE REPUBLIC OF UGANDA So No Suit

IN THE HIGH COURT OF UGANDA AT KAMPALA

HIGH COURT CIVIL SUIT No. 488/90

So No Injunction

ALFA TRADING & MANUFACTURING COMPANY LIMITED :::::::::: PLAINTIFF.

VERSUS

DEPARTED ASIANS' PROPERTY CUSTODIAN BOARD :::::::::: DEFENDANT.

BEFORE:- HON. MR. JUSTICE A.N. KAROKORA.

O. J. R. K. S. D. S.

R U L I N G:

This is an application made under Order 7 rules 11 (d) and 19 and Order 37 rule 4 of the Civil Procedure Rules seeking for an order that the suit be struck out for being barred by section 1 (i) of the Civil Procedure & Limitation (Miscellaneous Provisions Act 20/1969.

Secondly, the application seeks to set aside the Temporary Injunction granted on 15/6/90.

Thirdly, it seeks costs to be granted and for any other relief the court deems fit to be granted.

The application is supported by an affidavit sworn by Mr. Bashenyi Mwerinde Acting Executive Director of the Applicant/Defendant.

In paragraph 3 of the affidavit it is averred as follows:

"That the Board terminated the plaintiff's tenancy in the suit premises by its letter dated 23/3/90 and consequently the plaintiff instituted Civil Suit No. 1760/1990 in the Chief Magistrates Court at Mengo and obtained an ex parte Temporary Injunction against the defendant on

12/4/90"

In Paragraph 3 of the same affidavit it is avered as follows:

"That the suit in Mengo Court was struck out together with the Temporary Injunction issued in the matter as being a nullity and contrary to law!"

In Paragraph 5 of the same affidavit by Mr. Bashenyi Mwerinde, it is avered as follows:

"That on 16th July, 1990, the Board was served with another Temporary Injunction issued by the High Court on the 15th June, 1990, restraining the defendant from evicting the plaintiff from the suit premises!"

In Paragraph 6 of the same affidavit it is avered as follows:

"That the Board was never served with the required statutory Notice notifying the Board that there was to be another suit in the High Court and if at all it was served the suit was premature^{ly}/commenced. Further that summons to Enter Appearance in Civil Suit No. 488/1990 was never served on the board!"

At the hearing of this application it was submitted that under section 6 of Civil Procedure Act the HCCS No. 488/1990 could not be filed in court where there was ^a pending suit at Mengo Court No. 176/1990 between same parties and concerning the same suit premises.

It is true that the law forbids a court from proceeding with a suit against another party for same subject matter in two or more different courts within Uganda.

However, in the instant case, there is no evidence before court that when HCCS No. 488/1990 was filed in the High court, Civil Suit No. 176/1990 had not yet been struck out as ~~deposed~~ to in paragraph 4 of Mr. Bashenyi Mwerinde's affidavit. In my view, existence of two different suits in courts between same parties concerning same subject matter would appear to be different from what section 6 of Civil Procedure Act stipulates. It would appear to me that problem would only arise at the commencement of the trial, because no trial would commence when there is another suit pending in another court between the same parties over the same subject matter. So from the above, one could say that two suits could co-exist in two courts between same parties concerning same subject matter, but problem would arise when time comes for hearing any of them. In my view, if Civil Suit No. 176 of 1990 at Mengo Court was struck out before HCCS No. 488/1990 was called for hearing, section 6 of Civil Procedure Act would not successfully be invoked to defeat the suit in the High Court as there is no suit that is now pending in Mengo Chief Magistrate's court.

I now come to another issue which was raised. This concerns absence of statutory Notice as required by Act 20/1969. Section 1(2) of Act 20/1969 clearly states:

"The written Notice required by the Provisions of this section shall be in the form set out in schedule 2 to this Act and every plaint subsequently filed shall contain a statement that such Notice has been delivered or left in accordance with the provisions of this section!"

Mr. Kalule counsel for plaintiff/Respondent submitted that there was notice given to the defendant though the notice did not conform to the standard form laid down by Act 20/1969. He invited me to the holding in the Iron & Steelwares Vs. C.W. Martyr & Company (1956) 23 EACA at page 177 where it was held inter-alia.

"Procedural rules are intended to serve as the handmaidens of Justice, not to defeat it, and we think that the High Court in its inherent jurisdiction to control its own procedure, has a discretion to waive the strict application of Order XVI rule 2"

The above observation would not properly be invoked to deal with a specific Act which makes it mandatory to give a statutory Notice before filing a suit against a defendant. The Act further makes a mandatory form of the Statutory Notice to be served upon one of the scheduled defendants who must be served with the Statutory Notice. It is mandatory upon plaintiff to service a Statutory Notice in the form prescribed by the Act which makes notice a mandatory requirement. Whereas Procedural rules must not be invoked to defeat justice, I must state that Procedural rules are laid down to guide in Court proceedings and I would expect the advocates to comply with those rules and especially when the statute spelling out a procedure makes it a mandatory procedure and requirement. In my Ruling it is my view that the statutory Notice must conform with the Notice prescribed by section 1 (2) of Act 20/1969.

In my view, a letter in the form of Annexure A₂ cannot be described as the Statutory Notice required by section 1 (2) of Act 20/69 as it is not a notice to the intended defendant. The letter in question was a mere request to the Board, but not the statutory Notice to the intended Defendant.

In the final analysis therefore I would say that the purported suit in question was filed without first serving a statutory Notice which was a pre-requisite to the filing of any suit against any of the scheduled bodies. Accordingly, there was no suit properly filed in court upon which a Temporary Injunction could be applied for and granted. In the circumstances, the purported suit is struck out as being incompetent as there was no statutory Notice served to Defendant prior to the filing of the suit.

Therefore, there could be no Temporary Injunction, issued when there was no suit properly before court. Accordingly the purported Temporary Injunction is set aside with costs.



A.N. KAROKORA,

J U D G E.

13/3/91.

19/3/91:

Ruling read in presence of Mr. E. Sekandi and
Mr. Kalule.



A.N. KAROKORA,

J U D G E.

19/3/91.

ANK/zk

