

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
HOLDEN AT MBALE**

HCT-04-CV-MA-77-2012

(From Tororo Civil Suit No. 23/2008)

WILSON OSUNA OTWANI.....APPLICANT

VERSUS

APOLLO YERI OFWONO.....RESPONDENT

BEFORE: THE HON. MR. JUSTICE HENRY I. KAWESA

RULING

This is an application commenced by notice of motion, brought under section 14 Judicature Act, Section 218 (1) of the MCA, as amended by Act 7/2007, Section 18 (1) (b) and section 98 of the CPA, and O.52 r. 1-3 of the CPR.

The applicant seeks orders from court that the Honourable Court be pleased to transfer civil suit No.23 of 2008 before the Chief Magistrate, Tororo to the High Court Mbale. That, costs of this application may be provided for.

The grounds upon which the said application are based are stated in the pleadings as:

1. Because of the delay in the disposal of the suit, and the fall in the value of money, the monetary reliefs sought against the respondents has risen to the tune of shs.1,040,400,000/= are now beyond the pecuniary jurisdiction of the Chief Magistrate.
2. The respondent has subsequently obtained a Certificate of Title for a full term to the cancellation which matter is beyond, the jurisdiction of the Chief Magistrate.

3. That it is fair and just that this application be allowed.

In support of the application, the applicant **Wilson Osuna Otwani** swore an affidavit in which he deponed facts in support of the application as above.

The respondent **Mr. Apollo Yeri Ofwono**, filed an affidavit in reply in which he opposed the application. In his affidavit the respondent states that there are no sufficient grounds to necessitate the transfer of the suit from the Chief Magistrate's Court to the High Court. He avers that the Chief Magistrate's Court has jurisdiction and the parties are based in Tororo.

On the 23rd of August 2013, when the matter came for hearing, **Mr. Okuku**, counsel for the applicant informed court that he was representing the applicant in the matter, while Counsel **Aketch Robina** represents the respondent.

Counsel **Okuku** then proceeded to argue the matters pleaded in the motion that the applicant seeks leave of the court to transfer CS 23 of 2008 from the Chief Magistrate's Court of Tororo to the High Court at Mbale. He stated that at the time the suit was at Tororo District Land Tribunal, the subject matter was land held under customary tenure. However, while the suit was pending the respondent fraudulently converted the land under the RTA and processed a Land Title. He informed court that he intends to seek among others, the cancellation of the Title under Section 177 (RTA). He argued that under that section, it is only the High Court that can direct an entry to be made to deregister. He argued that the Chief Magistrate does not have that authority.

Secondly he argued that in the motion, they intend to ask for leave for general damages for trespass, mesne profits, aggravated damages for fraudulent conversion

which is all estimated at shs. 1 billion. He argued that the jurisdiction of the Chief Magistrate under the MCA is only shs 50 millions. He pointed out that the reliefs they seek are beyond the jurisdiction of the Chief Magistrate. He referred Court to section 207 MCA which gives Chief Magistrates unlimited jurisdiction in matters of land held under customary tenure. He prayed that the matter be allowed with costs.

In reply, **Robina**, counsel for respondents informed court that the main focus of the application is that the Chief Magistrate does not have jurisdiction under the RTA. She argued that the above position is untrue. She referred to section 117 RTA and asserted that the section means that land can be recovered from anywhere and then a subsequent application made to cancel. She referred court to **David Kabungu v. Zikabuga and 4 Ors.** The case holding here was that:

“a suit filed in a court which has no jurisdiction cannot be transferred from that court, and that it was not true that the Chief Magistrate had no jurisdiction to try a suit where land was under the RTA. They found that the Chief Magistrate had jurisdiction. She concluded that the contention by applicants was untenable in law and cannot stand.”

On the question of mesne profits and damages totaling 1 billion, which is above the jurisdiction of the Chief Magistrate, she submitted that mesne profits and aggravated damages are mere reliefs arising from the cause of action which in this case is trespass. She referred to section 107 (1) (a) MCA and insisted that the Chief Magistrate has unlimited jurisdiction in conversion, damages or trespass. She also referred court to Mbale Municipal Council and others vs. Mohamed Bwamoya HC16/1998 where it was held inter alia that damages (general or special

are a result of a recognized cause of action but are not themselves an action. She concluded that it is speculative to assert that Chief Magistrate has no jurisdiction.

On the 3rd ground she argued that if the Chief Magistrate's Court has no jurisdiction then equally even the High Court has no jurisdiction to transfer the suit to itself. The law on this point from one court to another cannot be brought unless the suit has been made in a court that has jurisdiction to try it. She quoted **Kagenyi 1968 EA 43**.

Counsel for respondent also drew to the attention of court the fact that the principle governing transfer of suits is the balance of convenience, hardship, expenses. It has nothing to do with jurisdiction, she asserted.

In conclusion she argued that if court is left in doubt on the balance of convenience then the application must be refused. She argued that the suit without the amendment is still within the jurisdiction of the Magistrate's Court the application is therefore premature. She prayed that let the application be dismissed with costs.

Mr. Okuku for applicant, submitted in cross reply that his case is that the respondent's counsel contradicts herself when she argues that the application should not be allowed because the original suit was filed in a court without jurisdiction but in the sworn affidavit by respondent says the Chief Magistrate has jurisdiction.

He clarified that section 207 (2) MCA counsel referred to was misleading court. That the section referred to cases "where the cause of action is governed only by civil customary law- then jurisdiction of Chief Magistrate and Grade I is unlimited." The counsel did not deny that Respondent has converted the land to RTF.

He pointed out **Kagenyi** case only serves to emphasize his point that if the application is not granted then they will hear the matter before Chief Magistrate and then again travel to High Court to apply for cancellation of the Title which is an inconvenience. Lastly counsel for Applicant emphasized that he cannot make an application for amendment before the Chief Magistrate to pray for cancellation of Title and damages and profits of 1 billion. He prayed that the application be allowed.

I have carefully gone through the pleadings, the submissions by counsel in support of their pleadings and authorities provided. I find that the issues for determination are:

1. Whether the Chief Magistrate has jurisdiction to try the case.
2. Whether mesne profits, damages and anticipated aggravated damages for conversion estimated at 1 billion, operate as a bar to deter the Chief Magistrate from trying the suit for lack of pecuniary jurisdiction.
3. Whether this Honourable Court can transfer the lower court case to itself, when the lower court has no jurisdiction in the matter. i.e. is (whether the High Court has jurisdiction to transfer a matter from a lower court which has no jurisdiction to try the matter to itself).

I will resolve the issues above in the order I have listed them.

Issue 1:

Whether the Chief Magistrate has jurisdiction to try the case where the subject matter is land under the RTA.

According to the pleadings filed in the Chief Magistrates' Court of Tororo CS.23/2008, the parties are given as **Osuna Otwani** and defendants as **Apollo Ofwono Yeri**, and the Registrar of Titles.

The amended plaint under paragraphs 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12 allude to the fact that the plaintiff holds defendants liable in trespass on his land, for fraudulent registration of his land and obtaining title thereto. In paragraph 13, he sets out this prayer which he lists as;

- a) General and punitive damage for trespass.
- b) A declaration that plot 23/25 belong to plaintiffs.
- c) An order of cancellation of the Title Deed in possession of defendant.
- d) Costs hereof be provided for.
- e) Cancellation of the said Title deed.

It is dated at Tororo on 29th of April 2008, the same day it was received by court.

Appellant's main contention, why he brings this application is that the orders he seeks of cancellation of Title cannot be granted by the Chief Magistrate by virtue of section 117 RTA; because it is only the High Court which the jurisdiction to cancel Titles.

The other contention is that the pecuniary interest of the applicant in this case has since risen to shs. 1 billion inclusive of mesne profits, damages etc which puts the case above the pecuniary jurisdiction of Chief Magistrates.

In rebuttal counsel for responded argued that the case as filed before the Chief Magistrate should not be transferred to High Court because according to cases that have been decided *David Kabungu* (supra).

“A suit filed in a court that has no jurisdiction cannot be transferred from that court.....”

The above authority in my view stands on all fours with the current case in this matter. In this case, among other pleadings it was argued that the Chief Magistrate had no jurisdiction to entertain a suit which involved a prayer for cancellation of a certificate of title as the jurisdiction to cancel a certificate of title was a preserve of the High Court. The Judge held that;

“A suit which is filed in a court that has no jurisdiction cannot be transferred from that court. In this case it was not true that the Chief Magistrate had no jurisdiction to try a suit where the subject matter is land under the RTA therefore the Chief Magistrate had jurisdiction to try the suit.”

In the case before me the amended plaint which counsel seeks to transfer to this court clearly has specifically prayed for “cancellation orders” from the “Chief Magistrate’s Court” which he says has no jurisdiction! That alone means that the plaint as it appears now is incompetently before the Chief Magistrate court, where the case has been partly heard. The above authority clearly then sorts out this matter in that if Chief Magistrate has no authority to hear the matters, by virtue of the operations of section 177 RTA as plaintiff claims, then the suit was filed in a wrong court which had no jurisdiction and cannot therefore be cured by transfer to this Honourable Court. However, it is also not true that a Chief Magistrate has no jurisdiction to try a suit where the subject matter is land under the RTA. This position is also articulated in the case of **KAGENYI V. MISIRAMO & OTHERS** (cited by defence counsel) holding 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.”

I agree with defence counsel on this issue that the pleadings in the lower court cannot be placed outside the jurisdiction of the Chief Magistrate merely because they are brought under the RTA. According to the cases cited above, the Chief Magistrate has jurisdiction to try a matter where the subject matter is land under the RTA. I find this issue in the affirmative.

Issue 2:

Whether mesne profits, damages and anticipated aggravated damages for conversion, (Estimated at shs.1 billion by applicant) operate as a bar to deter the Chief Magistrate to try the suit, for lack of jurisdiction.

The plaint does not specify the amount of money plaintiff is suing for. However in the filed Notice of Motion, the applicant indicates that the intended reliefs sought are to the tune of 1,040,400,000/= which is above the pecuniary jurisdiction of the Chief Magistrate.

Counsel argued in similar terms before court, maintaining that the above figure is not speculative but genuine given the current value of land.

The respondent's counsel on the other hand referred to ***Mbale Municipal Council and Mashete v. Muhamed Wamboya HCCS Appeal 16/1998***, where a detailed discussion was made by the trial court on the principles governing such court awards like damages. Counsel's argument was that mesne profits, aggravated and special damages are mere reliefs arising from the cause of action. Citing the above case he argued that general damages or special damages are a result of a recognized cause of action but are not themselves an action. They are merely

prayed for and requested. Counsel maintained that to put them at 1 billion was speculative.

Again without repeating what was already said by counsel in cross reply, I am persuaded to agree with defence counsel that following the authorities cited, and pleadings as presented, it is clear that the shs. 1,040,400,000/= which counsel refers to in his Notice of Motion is not anywhere mentioned in the pleadings which are before the Chief Magistrate.

The amended plaint already has put to the notice of the Chief Magistrate that plaintiff is holding defendant liable for trespass,

“Pleads for general and punitive damages against defendants”-

However he doesn't mention the figure.

This to me indicates that as rightly held in the Mbale Municipal Council v. Mohamed case,

“the damages general or special are a result of a recognized cause of action in contract or tort but not in themselves a cause of action.”

The meaning of this in our case is that the pecuniary jurisdiction of the court is not dependent on the value of the reliefs sought, but on the value of the subject matter of contention. Indeed section 207 (1) while conferring jurisdiction upon Chief Magistrates is worded as follows:

“a Chief Magistrate shall have jurisdiction where the value of the subject matter in dispute does not exceed 50 million shillings.....”

Counsel for defendant seeks 1 billion in reliefs, but the pecuniary jurisdiction of the court depends on the subject matter in contention, which in my view given the circumstances of this case has not been named by applicant, but is said to be land under operation of customary law, later converted to leasehold. The speculative nature of the anticipated award of 1 billion shillings can therefore not be denied by counsel. For the above reasons I find that the issue terminates in the negative.

Issue 3:

Whether the High Court has jurisdiction to transfer a matter from a lower court which has no jurisdiction to try the matter, to itself.

This issue arose out of the submission by counsel for respondents that in the alternative if court finds that the Chief Magistrate's Court has no jurisdiction, then this court also has no jurisdiction to transfer the suit from the Chief Magistrate's Court to the High Court. She relied on the authorities of *Kagenyi 1968 EA 43* earlier referred to, that for the court to transfer it must consider the fact whether the original court had jurisdiction to try the matter.

I have already resolved this by finding that the Chief Magistrate's Court has jurisdiction to try this matter, and so the High Court has jurisdiction to transfer it.

However, I need to consider whether it is prudent to transfer this case to the High Court, given the circumstances.

According to decided cases, and also as argued by counsel for the respondents, court will only transfer a case for convenience of the parties, hardships or expenses involved.

In the case of **KAGENYI V. MISIRAMO** it was stated that:

“It is a well established principle of law that the onus is upon the party applying for the case to be transferred from one court to another for trial to make out a strong case to the satisfaction of the court that the application ought to be granted..... the matters to be taken into account are balance of convenience, questions of expenses, interest of justice and possibilities of undue hardship.... if the court is left in doubt as to whether under all circumstances it is proper to order a transfer, the application must be refused.”

Counsel for plaintiff/applicant pointed out that if the court orders the parties to remain at Chief Magistrate’s level, they will be inconvenienced, to come back to High Court to apply for cancellation. Respondents maintained that the case is within the jurisdiction of the Chief Magistrate and no inconvenience is foreseeable.

My opinion is that this case was filed in Tororo. The subject matter is in Tororo. Parties are from Tororo, and the matter is partly heard in Tororo Court. The main issue raised by counsel for applicant why he wants the transfer was the issue of jurisdiction. However decided cases have ruled that the reasons he cited do not allow a court to transfer the suit as already discussed. This leaves me to consider whether applicant has made out a strong case to show that the balance of convenience warrants a transfer. The only fear applicant mentioned is that if court disallowed the transfer then they will have to reapply to High Court for the cancellation which is an inconvenience. However if you juxtapose that with the inconvenience of moving all parties from Tororo to Mbale, expenses of witnesses,

moving on locus, retrying the entire case, the balance tilts in favour of keeping everyone at Tororo. Even securing an early hearing date in the High Court is another inconvenience as the High Court Diary now is full of pending cases. I hold that on a balance of convenience, it is not prudent to transfer this case to the High Court. I terminate this issue in the affirmative. The High Court has inherent jurisdiction to transfer any matter to itself but, within the confines of the law. This particular case however for reasons afore stated does not fall within that category of matters, and I will decline to allow the prayers for transfer.

I find that for reasons above the application is disallowed. The lower court record will be sent back by the Registrar for continuation of the trial before the Chief Magistrate. I so order.

Application dismissed with costs.

Henry I. Kawesa

JUDGE

12.09.2013