

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

MISC. CAUSE NO. 168 OF 2014

MUKISA PATRICK ::: APPLICANT

- VERSUS -

UMEME LTD ::: RESPONDENT

BEFORE: HON. MR. JUSTICE STEPHEN MUSOTA

RULING

This is an application brought by Notice of Motion under Section 11 (1) and (5) of the Civil Procedure Act and Order 52 with no rule indicated of the Civil Procedure Rules for orders that;

1. Civil Suits 177 of 2011 and 178 of 2011 of the Chief Magistrates' court of Nabweru be transferred to High Court.
2. Costs of the application be provided for.

The grounds of the application are that:

1. The two matters were transferred to Nabweru amid protest by the applicant.
2. Both suits have not been scheduled to date or have been neglected or frustrated making justice unnecessarily delayed.
3. That the High Court has jurisdiction to try the suits.

The application is supported by the affidavit of the applicant Mukasa Patrick wherein he explains that the suits have been allocated to three Magistrates in the last three years who have

failed to schedule a date and to rule on preliminary objections thus causing hardship to the plaintiff and is contrary to the constitution.

In reply the respondent through Mr. Paul Kaweesi an advocate of the High Court opposed the application arguing that it is misconceived, baseless, and incompetent in law and lacks merit.

That the suits complained of are ongoing in court and by the time of swearing were fixed for 23rd October 2014. That both Civil Suits 177 of 2011 and 178 of 2011 have never been consolidated making this application untenable.

Court allowed respective parties to file written submissions which are on record.

I have considered the application as a whole, the law applicable and the submissions by respective counsel. It is trite law that court may transfer a suit for the convenience of the parties or the hardships encountered or to limit the expenses involved. The burden is on the applicant for the case to be transferred from one court to another for trial to make out a strong case to the satisfaction of 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 possibility of undue hardship. If court is left in doubt as to whether under all circumstances it is proper to order a transfer, the application is refused. See: ***Kagenyi Vs Misiramo [1968] EA 43.***

As rightly submitted by learned counsel for the respondent, the law which permits the High Court to transfer suits is provided for under Section 18 (1) of Civil Procedure Act and specifically paragraph (b) which states that the High Court may withdraw any suit or other proceeding pending in any court subordinate to it and try to dispose of it; or proceeding, transfer the suit to any court competent to try or dispose of it; or transfer the suit or proceeding. The applicant therefore brought this application under a law which is not applicable to transfer of suits.

I agree with learned counsel for the respondent that it is convenient for the two cases sought to be transferred to be heard and determined at Nabweru Chief Magistrate's court because the causes of action in both cases arose in Nangabo village, Nangabo Sub County in Wakiso district. This fact is not rebutted by the applicant. It has been revealed that the applicant has contributed to the delay in the disposal of the two cases because of the numerous applications he has filed in the lower court some of which are for review which can only be heard by the same courts which delivered the rulings.

Therefore the balance of convenience tilts in favor of keeping everyone at Nabweru instead of bringing them to Kampala Civil Division which is chocking with back log and securing a near hearing date is very difficult. Furthermore, the respondent's witnesses are stationed at Kasangati in Nangabo Sub County which is near to Nabweru court.

All in all, I am not satisfied that sufficient cause exists to warrant transfer of the two cases to this court for trial. The fixing of hearing dates for the cases mentioned should be administratively done by the Chief Magistrate of Nabweru. This application is dismissed with costs.

Stephen Musota

J U D G E

09.09.2015