

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT JINJA

CIVIL APPEAL NO. 102 OF 2011

5 (ARISING FROM BUGIRI MISC. APPLICATION NO. 006 OF 2010)

HAJJI MEDI ::: APPELLANT

VERSUS

10

WANDERA STEPHEN ::: RESPONDENT

BEFORE: THE HON. JUSTICE GODFREY NAMUNDI

15

JUDGMENT

This Appeal arises out of the Ruling of the Magistrate Grade I sitting
20 at Bugiri, Ms. Agnes Alum delivered on 21/12/2011.

The back ground to this matter is that the Applicant who is now the
Respondent filed an Application before the Magistrate's Court,
seeking orders that the Respondent gives him access to his property.
25 The said property was locked up in a rental house belonging to the
Respondent/now the Appellant located in Mukuba Zone, Bugiri Town
Council.

The then Respondent denied knowledge of the Applicant and his
30 claim. The Magistrate decided in favour of the Applicant/Respondent

and ordered him to release the Applicant's property or its value, General damages and costs.

The Appellant Hajji Medi has raised 5 grounds of Appeal namely:

- 5 1. The learned trial magistrate erred in law and fact when she maintained a suit instituted by Notice of Motion and as such adopted an erroneous procedure leading to injustice to the Respondent.

- 10 2. That the learned trial Magistrate erred in law and fact when she delivered a Ruling/Judgment based on evidence riddled with inconsistencies and discrepancies.

- 15 3. That the learned trial Magistrate erred in law and fact when she failed to properly evaluate evidence on record as a whole and as such reached a wrong decision.

- 20 4. That the trial Magistrate erred in law and fact when she held that the Applicant proved his case on a balance of probabilities and that the Respondent was the landlord of the Applicant responsible for locking up the suit premises.

- 25 5. That the trial Magistrate erred in law and fact when she granted an order for General damages in a suit instituted by a Notice of Motion.

Mr. Ngobi Balidawa was Counsel for the Appellant and Mr. David Ojambo for the Respondent.

Grounds No. 1 and 5 were each argued independently while Grounds
5 No. 2, 3 and 4 were argued together.

Ground No.1:

It was submitted for the Appellant that it was fundamental erroneous
and breach of the rules of procedure to commence this dispute by
10 way of Notice of Motion supported by an affidavit.

That this was a matter involving substantial issues of facts and should
have been instituted by way of ordinary Plaint in accordance with
Order 4 Rule 1 of the Civil Procedure Rules. Reference was made
15 to: General Parts (U) Ltd. & Haruna Semakula Vrs. NPRT,
where it was held that the only modes of instituting suits is by Plaint,
Originating Summons or Petition. That a Notice of Motion is not an
alternative mode of instituting suits.

20 It was also submitted that the Notice of Motion did not quote the law
under which it was brought to establish any locus in Court. it was
argued therefore that the matter before the lower Court should have
collapsed on that ground alone.

25 For the Respondent it was submitted that a Ruling on the same issue
was made before the trial Magistrate and no appeal therefrom was

made. General Parts & Haruna Semakula Vrs. NPERT (supra) was also cited where it was also held that striking out the appeal on grounds that the suit had been by Notice of Motion would be violating the principle of substantive justice.

5

It is submitted that the Appellants were not prejudiced or that there was no miscarriage of justice as a result of proceedings under Notice of Motion. Reference was made to the Court of Appeal Cases: Hodondi Daniel Vrs. Yolamu Egondi Civil Appeal No. 67/2003
10 and Andrew Jacan Akul Vrs. Oluko Sub-county HCT-Misc. Application No. 007/2010 where it was held that technical matters should not prevent Courts from investigating disputes.

A perusal of the trial Court record reveals that the matter was indeed
15 commenced by Notice of Motion to which the Respondent filed a reply. The said reply did not challenge the competence of the pleadings. The trial proceeded and witnesses testified and were cross examined.

20 It was much later in the advanced stages of the trial that the propriety of the pleadings were challenged by way of an objection on a point of law. The Magistrate overruled the objection and the matter proceeded to its conclusion. No appeal against that Ruling was filed.

25 Order 4 Rule 1 (i) of the Civil Procedure Rules provides that every suit shall be instituted by presenting a Plaint to the Court or

such officer it appoints for this purposes. Sub-rule (2) thereof requires that such Plaintiff shall comply with the provisions of Orders 6 and 7 of the Civil Procedure Rules.

- 5 The said Orders 6 and 7 of the Civil Procedure Rules regulate the form and content of the said Plaintiff.

It is accordingly clear that the only modes of instituting suits is by Plaintiff. Other modes in specific circumstances provided by law are by
10 Originating Summons or by Petition. The instant case is not one of those exceptions.

However, the circumstances are that this matter was heard, witnesses testified and were cross examined. In short both parties
15 and their witnesses were given an opportunity to be heard.

In *General Parts (U) Ltd. and Another Vrs. NPRT (supra)* while the Supreme Court confirmed that the institution of suits by Notice of Motion is erroneous, it considered the circumstances of that particular
20 case and held as follows:

“If the Appellants had taken out a preliminary objection that the suit by Notice of Motion was irregular, they would undoubtedly have been entitled to an order striking it out.”

- 25 However, to make such order after trial, albeit on an affidavit evidence only, or subsequently on appeal, would amount to

having undue regard to technicalities to the prejudice of substantive justice.

They were not prejudiced and no miscarriage of justice was
5 occasioned. In the circumstances, it was appropriate to invoke the principle preserved in Article 126 (2) (e) of the Constitution,.....that substantive justice should not be unduly impeded by technicalities.”

10 It is my finding that since the instant matter was heard, witnesses testified and all parties were given an opportunity to be heard, no miscarriage of justice was occasioned. This ground fails accordingly.

15 Of course I hasten to say the procedure the Applicant opted for was wrong and should neither be repeated nor encouraged. Courts should not even wait for the issue to be brought to their attention by way of objection but should deal with and strike out defective pleadings right from the beginning.

20

Grounds No. 2, 3 and 4:

It was submitted that the testimonies of the witnesses were riddled with discrepancies. It is submitted that PW2 and PW4 claimed their landlord is one Nandubu while DW3 Bakari Ronald claimed he only
25 knows of the houses the Appellant owns in his area of residence (Nkusi).

DW2 on the other hand while claiming the landlord is Medi with a house in Mukula Zone, the receipts he produced for payment of rent bears - Nkusi ward.

5

Further that the Notice of Motion did not attach evidence of ownership of the property. Further that nobody saw the person who locked the premises. That the Magistrate came to the wrong conclusion.

10 For the Respondent it has been submitted that the Magistrate relied on the evidence of PW2, PW3 and PW4. The documents tendered by PW2 were signed by the Appellant. She knew the Appellant as her landlord in Mukuba Zone and the Appellant used to collect money from her. The Respondent was staying in the same house but in
15 different rooms.

The Chairperson DW2 was a chairperson for Nkusi Zone and would accordingly not have capacity to testify about properties in other Zones that belonged to the Appellant.

20

From the evidence on record, it is clear that the Appellant much as he denied it used to collect rent from the Respondent and some other tenants. If he issued receipts that bear different particulars is a different issue altogether. Why would he collect rent from the
25 Respondent and other tenants?

There is no evidence that he had showed the said tenants any other landlord. He is the only person they knew who would collect the rent from them. Further, he did not have to be the owner of the premises in order for him to have the landlord/tenant relationship with the
5 Respondent.

The submission that he owned no premises in Mukuba Zone and yet he collected rent regularly is very misleading. I find that the Magistrate properly evaluated the evidence. These grounds also
10 succeed.

Ground No. 5:

It is submitted that General damages were never prayed for in the affidavit in reply, neither did the Respondent pray for them in his
15 evidence. It is submitted for the Respondent that there is nothing irregular in claiming for General damages in a suit by Notice of Motion.

Further that the Respondent was inconvenienced when the house
20 was locked. It is the finding of this Court that indeed the affidavit in reply and the Respondent's testimony in Court say nothing about General damages.

In the affidavit the Respondent only states that he wants refund of
25 expenses incurred. This in technical terms would be known as

“Special damages.” These would have to be strictly prayed for and proved. They were not proved by evidence.

The Magistrate in her Ruling found that General damages were a
5 necessary consequence of the Appellant’s wrong doing. She awarded a sum of Shs.700,000/=.

While it is true that General damages would be called for, they had to be pleaded, and explained/proved by evidence. This would have
10 enabled the Court to determine the quantum.

There is no explanation as to how the Magistrate arrived at the figure of Shs.700,000/=. It was arbitrary. That award is accordingly disallowed and set aside.

15

In conclusion, this appeal fails on Grounds No. 1 - 4 for lack of merits. Ground No. 5 succeeds and the award of Shs.700,000/= as General damages is set aside.

20 In respect of Ground No. 1 – 4, the Ruling and orders of the Magistrate are upheld. The Appeal is accordingly dismissed and the following orders are made:

1. The Appellant to give back to the Respondent the property he locked up in his premises. In default thereof he pays the value
25 thereof which amounts to Shs.3,475,888/= as per the Ruling of the trial Court.

2. The Appellant is to meet the Respondent's costs of this Appeal and those in the trial Court.

5

Godfrey Namundi

JUDGE

7/5/2015

10

7/5/2015:

Appellant present

Respondent absent

5 Court: Judgment delivered in Court.

Godfrey Namundi

JUDGE

10 7/5/2015