

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

**HCT-04-CV-MA-007-2013
(ARISING FROM CIVIL SUIT NO. 14/2010)**

MANANA FRANCIS.....APPLICANT

VERSUS

1. WANIAYE KHATULI KENNETH

2. MBALE MUNICIPAL COUNCIL

3. ATARI HIGH COURT BAILIFF,

LEGAL CONSULTANTS AND AUCTIONEERS.....RESPONDENTS

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

RULING

This is an application by the applicant requesting orders from the High Court to transfer civil suit 14/2010 filed in the Chief Magistrate's Court of Mbale to the High Court.

The reasons for the prayer are that whereas the Chief Magistrate has pecuniary jurisdiction to hear the suit before its court, the situation changed when the first and second Respondents in writing directed the third respondent to break into applicant's premises to evict him and made off with property worth 217,350,000/=.

Applicant applied to court to amend his pleadings to bring the third respondent on board and to reflect the change in value of the applicant's claim. Court granted the

amendment which meant that the amended plaint could not be handled by the Chief Magistrate whose jurisdiction does not exceed 50,000,000/=.

The plaint according to plaintiff/applicant couldn't be received by the Chief Magistrate hence this application for transfer to high Court. Counsel for Applicant relied on Sections 11 (2) MCA, Section 33 of the Judicature Act, and Section 17 Judicature Act.

In reply to the above counsel for the first Respondent argued that the application is misconceived since the applicant's counsel ought to have waited for the ruling of the trial Magistrate before taking any step and yet he did not file any amended plaint to guide court that the Magistrate had no jurisdiction.

He argued that the amount of 217,310,000/= was only introduced when Counsel was requesting for transfer of the suit from Grade I to High Court but there is no basis for the same. He argued that if the applicant has a cause of action against the respondents he can file a separate suit since the original suit is of 2010 and events leading to amendments are of 2012 and talking of different cause of action against the respondents.

In rejoinder **Counsel Okuku** stated that this was a superficial submission since the matters alluded to according to him were properly handled and an amended plaint was dully filed.

Mr. Dagira for 3rd Respondent submitted that the affidavits in support and in rejoinder by the applicant dated 10/January/2013 and 12th August 2013

respectively should be struck off the record because they were not commissioned in accordance with the law. He referred to section 1 (6) of the Illiterate Protection Act Cap.78 to show that the affidavits offended Section 1 of the Oaths Act and Section 3 of the Illiterates Protection Act. He referred to Election Petition No. 001/96 Odetta John Henry v. Omede O'Max.

Secondly he argued that for 3rd Respondent the application lacks merit. He showed that the purported application arises from CS. 143 of 2009 from Mbale Chief Magistrate's Court, but the same application arises from Civil Suit 14/2010 and not 143 of 2009. He wondered therefore which suit it was. He further pointed out that applicant never actually amended the plaint, so the pleadings do not reflect the 3rd Respondent and no monetary increase arose.

He reminded the court that it's a trite law that a suit filed in a court that lacks jurisdiction cannot be transferred (Kagenyi v. Masirano (1968) EA.43). Such a suit is an illegality and has to be dismissed because an illegality once brought to the attention of court cannot be condoned. He argued that if the suit in the lower court is an illegality the proper remedy is for court to dismiss it for lack of jurisdiction and not to transfer it to this court. He argued that this illegality also overrides the reliance on section 218 (1) (b) of the MCA. The suit ought to be dismissed. He ruled out reliance on sections 14 Judicature Act and 98 of the Civil Procedure Act, for the same reasons of illegality. He concluded that the 3rd Respondent was not a party to the original suit before the Chief Magistrate and to drag him into these proceedings is frivolous.

In rejoinder counsel **Okuku** argued that the section does not envisage a translator becoming a party to the proceedings. He also argued that it would be unwise and unacceptable to assume but rather there is need to raise sufficient evidence on record on a balance of probabilities to actually prove that the deponent did not understand anything that he signed for. He reiterated the earlier submissions that the Chief Magistrate's Court pecuniary jurisdiction could not cover the increase to 217,000,000/=.

From the above facts and arguments, the following questions arise for determination:

1. Did the plaintiff/applicant commit an illegality when he filed the suit in the Chief Magistrate's Court.
2. Could the plaint be amended to reflect the increase in jurisdiction to 217,000,000/=?
3. Is the original suit (plaint) and the amended plaint the same set of transaction?
4. Is the application tenable?

I will answer the questions above as herebelow.

1. Did the plaintiff commit any illegality while filing the amended suit (plaint)?

I have carefully examined the facts giving rise to the matter.

From the record I have noted that the proceedings typed and certified for CS.14/2010 shows that on 22.02.2013 matter proceeded before **Nanteza Zurah** Magistrate Grade I. **Counsel Okuku** informed court that they had been allowed to

amend their proceedings and that as a result they are asking for more money than the court's jurisdiction. Counsel applied to have the file transferred to High Court.

That application was objected to and replied to by **Counsel Mutembuli** where after the matter was adjourned to 06.March.2013 for Ruling. Before the ruling was given, Counsel applied to this Court for transfer of the suit. He also filed an amended plaint.

The facts above show that the amended plaint was an afterthought. The law is that a party should file a matter in the court which has pecuniary jurisdiction. I therefore agree with both Counsel Mutembuli for 1st Respondent and Dagira for 3rd Respondent that counsel Okuku ought to have waited for the ruling of the trial Magistrate.

Secondly the amended plaint introduced a whole new set of facts shifting from the facts which earlier on constituted a cause of action by time of first pleadings (plaint). When the amended plaint was filed it introduced new facts i.e. a higher demanded amount and a 3rd party (3rd Respondent).

As argued by **Counsel Dagira** therefore, the applicant was granted leave to amend the plaint but he never actually amended the plaint by having it filed on court record. The effect of none filing is that the claim remained as it were originally filed without including the 3rd Respondent, or increasing the monetary value of the claim. Going by the *Authority of Kagenyi v. Musiramo (1968) E.A. 43*.

A suit filed in a court that lacks jurisdiction cannot be transferred. Such a suit is an illegality; and cannot be condoned.

The effect of the above positions therefore is that;

- i) The failure by Counsel to amend and file the plaint rendered any other attempts to transfer the suit irregular because the suit was still pending a ruling/decision on the matter before the Grade I.
- ii) The amended plaint in its form was not transferable from the lower court whose jurisdiction was lower than the High Court. It is an illegality that cannot be condoned.

The second question as to whether the plaint could be amended to reflect the desired increase of 217,000,000/= is answered in the negative.

My holding is that following arguments of both Counsel for Respondents are persuaded to agree with them that introducing the 3rd Respondent and the issue of shs. 217,000,000/=. On the plaint, drastically changed the cause of action. The mischief complained of by the first filing happened around 15th February 2010. As argued by **Counsel Mutembuli**, the original pleadings were for amendment to cater for adequate compensation as at time of first filing. However later the amount of shs. 217,310,000/= was introduced when a whole new set of facts arose. (See **Manana Francis'** affidavit in rejoinder paragraph 3 and 4 thereof which show the changes above).

Counsel Dagira further shows that the 3rd Respondent was not a party to the original suit before the Chief Magistrate and cannot be dragged into the proceedings by transfer as is being sought.

My view is that the best cure for this is filing a proper suit, with proper parties in the High Court, but transferring is impossible on account of the illegalities and incompetencies pointed out. (See *Makula International v. Cardinal Nsubuga 1982 HCB 11*).

An illegality once brought to the attention of court cannot be allowed to stand and the illegality supersedes all questions of pleadings.

Regarding whether the suit is tenable, **Counsel Dagira** raised issues of form of the affidavits. Having gone through the arguments. I agree with **Counsel Okuku** that the affidavits are properly before Court.

Regarding the questions of remedies I do find that this application cannot succeed for reasons stated. The parties have to wait for the Ruling regarding the application **Counsel Okuku** made before the trial court.

However I have already found that the original suit if amended in its current form cannot be transferred to this court for being illegal. For this and other reasons discussed herein the application is rejected. Costs in the cause.

Henry I. Kawesa

JUDGE

11.06.2015