

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT GULU

HCT-02-CV – CA – 0038 -2014

(Arising from Kitgum Civil Suit No. 005 of 2014)

AKERA J. OKELLA:::APPELLANT

VERSUS

AKELLO ROSE::: RESPONDENT

JUDGMENT

This appeal is arising out of CS No. 05/2014 where in the Chief Magistrate of Kitgum passed judgment in favour of the plaintiff.

The civil suit was against Akera J. Okella.

The appeal is in the names of Akera J. Okella with Akera Charles (proper names).

This court had the benefit of hearing from the Respondent one Akello Rose who confirmed that she was contending with Akera Charles not Akera J. Okella.

As first Appellate Court, I had to peruse thoroughly well the record of the lower courts.

The record of the lower court indicates the defendant as Akera J. Okella.

There is nothing to show that Akera J. Okello is also called Akera Charles being his proper names.

Akera J. Okella and Akera Charles are two different people. Counsel for the Respondent has even put Akera Charles in her submissions.

Much as Counsel for Akera Charles submitted that this court should take evidence from some witnesses this court is of the view that the lower court mismanaged the suit and therefore did not ably address its mind to the issues in controversy.

The judgment which is appealed against is in the names of Akera J. Okella.

The warrant to give vacant possession of the land is against Akera J. Okella.

The commitment warrant for recovery of costs was against Akera J. Okella.

This court does not know how the Appeal came to be in the names of Akera J. Okella Akera Charles (proper names).

I came across a bill of costs which is dated 19/11/2014 allowed at one million seven hundred nine thousand only and a minute on record which is also reading "Taxed and allowed at shs. 1,709,000/=.

The Chief Magistrate signed but in the same file the Chief Magistrate indicated on a Bill of costs filed by Akello Rose dated 24/10/2014 that taxed and allowed at 2.791,500/=.

Actually this bill indicted 2.791, 500/= as Grand total. There was therefore no taxation.

The Decree dated 1st Oct.2014 also ordered for compensation of 12,000,000/= which was not raised by the plaintiff at all in the cause of hearing.

The Decree is against Akera J. Okella who never defended himself.

If is apparent that the civil suit was against the wrong party and the trial Chief Magistrate did not bother to put the record right.

The plaintiff/Respondent should have been asked to amend her pleadings and sue the Right defendant.

I looked at the judgment and it was no better than these written by local Council officials.

In view of the above, this court cannot take fresh evidence to core the apparent error on record created by the plaintiff in the lower court.

Akera Charles who has instructed Counsel for the Appellant has no locus standi in this appeal even in the lower court because he was not sued by the plaintiff.

Execution against Akere J. Okella cannot stand because he was never served with court summons.

I wonder how it escaped the Chief Magistrates mind when Akera Charles testified as DW1 the defendant where as he was not, according to the pleadings;

The proceedings in the lower court are irregular because the plaintiff sued a wrong party and was in court with a different person who volunteered to participate in the proceedings illegally.

The trial Chief Magistrate must have used extraneous means to allow Akera Charles to participate in the proceedings when the pleadings indicated Akera J. Okella who is indeed in existence.

There is no way this court can Condon swapping of names in a casual manner when we have the civil procedure Rules which regulate the conduct of civil matters where a wrong party is sued.

The plaintiff should have been advised to amend the pleadings. As the court of first instance, in this case its main duty was to ensure that the pleadings are perfect.

Being an appellate court and a court of record, I cannot ignore the errors of the lower court and continue with the case under a wrong defendant/"Appellant".

There is nowhere on the record where it is clearly indicated that Akera J. Okella's proper names are Akera Charles. That is the invention of the advocate on Appeal.

It is not uncommon for the plaintiff to misname a defendant in a statement of claim or misspell the defendant's legal names. In such circumstances especially if the plaintiff has served the claim on the correct defendant, the parties often acknowledge the error and move on with

litigation. However, depending on the severity of the error, failure to name the correct defendant may have prejudicial consequences especially when it comes to visiting locus, giving evidence and execution.

In the instant case, the judgment, the decree, bill of costs, warrants are in the names of Akera J. Okella who actually exists.

Akera Charles who was served with court papers in the names of Akera J. Okella who owned the land adjacent to the suit land for reasons best known to him filed a defence and informed the Chief Magistrate that he is not Akera J. Okella.

Being lay people who were not represented, the trial Chief Magistrate should have put the record right.

He did not.

There is no way the warrant in the names of Akera J. Okella can be executed against Akera Charles for these are two different people.

It is not enough for the Respondent to inform High Court that I contend with Akera Charles not Akera J. Okella.

This should have been done and corrected at the court of first instance.

In the result, this court finds the whole proceedings of the lower court erroneous and illegal. Consequently this court sets the Judgment and Decree aside with the following orders.

1. The plaintiff/Respondent is free to file a fresh suit subject to the law of limitation against the proper defendant using the Right names.
2. The status quo prevailing before filling civil suit No. 5/2014 at Kitgum should be maintained.
3. No costs are awarded to Akera Charles because he was not a party to the suit in the lower court but misled court by attending as the defendant. He is not therefore treated

as Appellant. He merely brought to the attention of the High Court the irregularity which this court cannot ignore.

4. In case a fresh suit is filed, the Grade 1 Magistrate of Kitgum court should preside over it not His Worship Omalla Felix.

I so order.

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Mutonyi Margaret

Judge

30/7/2015

20/8/2015

Judgment delivered in the presence of Judith Oroma for the Respondent.

The respondent in court.

The appellant and Counsel absent.

Anthony- Court clerk.

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Henry Twinomuhwezi

Assistant Registrar

20/8/2015

5. In case a fresh suit is filed, the Grade 1 Magistrate of Kitgum Court should preside over it not His Worship Omalla Felix.

GIVEN under my hand and the seal of this Honourable Court thisday of2015

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Henry Twinomuhwezi
Assistant Registrar