

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

CIVIL DIVISION

CIVIL SUIT NO. 028 OF 2012

SSERUFUSA EDWARD EDWARD MUKASA ::::::::::: PLAINTIFF

- VERSUS -

1. GLORIA MATOVU

2. MUKIIBI DAVID SEMAKULA ::::::::::: DEFENDANTS

3. MMAKS ADVOCATES

RULING

At the commencement of the hearing of this suit, Mr. Sembatya learned counsel for the defendants raised two preliminary objections on;

1. Whether the plaint discloses a cause of action.
2. Whether the suit is barred in law and an abuse of court process.

In respect of the first objection, Mr. Sembatya submitted that the amended plaint states the cause of action against the first defendant as being professional misconduct relating to her deponing of an affidavit in reply in a previous suit on behalf of Karim Hirji and Waiswa Moses against the second defendant as being slander, verbal threats and intimidation. That the plaintiff is suing the third respondent for being vicariously liable for being lawyers of the first and the second defendant. That both the first and second defendants are advocates of this court, and the second defendant still practices with the third defendant. Learned counsel further submitted that the first and second defendants have never been retained or acted for the plaintiff and there is absolutely

no relationship professional or fiduciary between them. That the third defendant's firm has never been retained or instructed by the plaintiff to render any professional service to the plaintiff. It therefore follows that the plaintiff cannot sustain any action against the defendants based on professional misconduct. That the plaintiff therefore enjoyed no right that was violated. Therefore the plaint should be rejected.

Regarding the second objection, Mr. Sembatya submitted that the plaintiff's suit is barred in law and an abuse of court process because the matters complained of in the suit are directly and substantially in issue in Civil Review No.6 of 2011 arising out of Misc. Cause 21 of 2011 against Mr. Bamwite and the same is before the Land Division. That among the issues in the application are issues to do with the first respondent's mandate to swear an affidavit in reply for Karim Hirji and Waiswa Moses which is the basis of the allegation for professional misconduct in the instant suit. That this fact renders this suit an abuse of court process, learned counsel prayed that the plaint be rejected under Order 7 rules 11(d) and (e) of the Civil Procedure Rules with costs.

In reply Mr. Serufusa who appeared in person submitted that the objection be overruled. That his suit cannot be barred by law when there was fraud and deception. That the respondents were authorized by Karim Hirji and Waiswa Moses to depone an affidavit of service. That the plaint has a cause of action and raises serious points of law including breach of etiquette and misconduct. That the plaintiff's rights were violated by the second defendant by assaulting him using verbal threats in the court premises after the hearing of Misc. Cause No.81 of 2010 and Civil Review No.6 of 2011.

Mr. Serufusa further submitted that the defendants pretended to be what they were not meaning they impersonated and did unsatisfactory things and are vicariously liable. He further submitted that Order 7 rules (1)(d) and (e) of the Civil Procedure Rules are not applicable to this suit and should be heard on merit under Article 126 (2)(e) of the Constitution. He further clarified that

Civil Revision 6 is not pending because court made a ruling on 25th October 2012 and he lost it. That the objections be dismissed.

In rejoinder Mr. Sembatya submitted that whereas the suit involves slander, intimidation and fraud, these are not particularized. That Article 126 (2)(e) of the Constitution is not applicable because it applies where there is a cause of action.

I have considered the objections raised by Mr. Sembatya and his submissions on them, I have also considered the submissions by the plaintiff in response and the law applicable. I am in agreement with Mr. Sembatya that this suit discloses no cause of action and is barred by law because of the following reasons:-

1. The first and second defendant have never been retained or acted for the plaintiff and there is absolutely no relationship, professional or fiduciary between them and the plaintiff herein.
2. The third defendant firm has never been retained or instructed by the plaintiffs to render any professional service to the plaintiff.
3. In view of one and two above the plaintiff cannot sustain any action against the defendants based on professional misconduct.
4. It is a well settled principle that for there to be a cause of action the plaintiff must have enjoyed a right and that right must have been violated and the defendant is liable.
5. In the instant suit, the plaintiff has failed to show that any of his rights were violated by the defendants in view of what I have outlined above. In the instant suit the plaintiff enjoyed no rights against the defendants and it follows that no right was violated.
6. The plaintiff's suit is barred in law and an abuse of court process because the matters complained of in this suit were directly and substantially in issue in Civil Review No.6 of

2011 arising out of Misc. Cause 21 of 2011 against Mr. Bamwite which the plaintiff has revealed that he lost. One of the issues in that review had to do with the first respondents' mandate to swear an affidavit in reply to Karim Hirji and Waiswa Moses which was the basis of the allegations in this suit. This therefore is barred by res judicata and therefore barred by law. (Section 7 of the Civil Procedure Act refers)

Consequently I will find that the suit discloses no cause of action and is barred by law. Its plaint is accordingly rejected under Order 7 rules 11 (a) and (d) of the Civil Procedure Rules and with costs.

Stephen Musota

J U D G E

27.05.2015