

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA SITTING AT ARUA
MISCELLANEOUS CIVIL REVISION No. 0003 OF 2017

MUNDUA RICHARD **APPLICANT**

VERSUS

CENTRAL NILE TRANSPORTERS ASSOCIATION **RESPONDENT**

Before: Hon Justice Stephen Mubiru.

RULING

The proceedings of the court below were brought to the attention of this court under its supervisory jurisdiction in terms of section 17 (1) of *The Judicature Act*, seeking directions regarding a controversy over procedural issues that have arisen in an ongoing civil trial before a Grade One Magistrate. It was indicated in the letter referring the controversy to this court that in a pending civil trial in the court below, the subject matter concerns a contract for transportation of cassava cuttings from Kabarole District to Arua. Three issues to be decided were settled at the commencement of the hearing. At the close of the hearing, counsel for both parties filed written submissions and the trial magistrate fixed a date for delivery of the judgment. On the day fixed for judgment, the trial magistrate instead delivered a ruling by which he added three more issues to the original three agreed upon at the commencement of the hearing. He also directed the Acting Chief Administrative Officer of Arua, who signed the contract in dispute, be summoned as amicus curie to clarify on the nature, scope and legality of the said contract and to clarify on a number of contradictions he had found between the certificate of incorporation and the memorandum and articles of association of the plaintiff.

Upon receipt of the referral, I caused notices to be served on counsel for both parties to afford them a hearing before giving directions on the matters in controversy. At the hearing, only counsel for the plaintiff, Mr. Samuel Ondoma was in court and he submitted that the magistrate framed additional issues and called for additional evidence after both parties had closed their

case, on a date he had fixed for judgment. Both parties were notified and they presented the evidence. Reopening of the case was at the court's own motion. Each party was given opportunity. There was no miscarriage of justice.

The first area of concern surrounds the decision by the trial magistrate to summon a witness as a friend of court. Under order 18 rule 13 of *The Civil procedure Rules*, court may at any stage of the suit recall any witness who has been examined, and may, subject to the law of evidence for the time being in force, put such questions to him or her as the court thinks fit. This provision does not permit court to call witnesses who have not testified before court. On the other hand, an *amicus curiae* (friend of the court) is someone who is not a party to a case and is not solicited by a party, but who assists a court by offering information that bears on the case. Prospective *amici* should be capable of bringing a new and special legal or factual perspective to the case, should have the relevant expertise and experience and should be independent and should not cause an undue burden or unfair prejudice to one of the parties.

The friend of Court must be a person without interest in the suit (see the case of *In the matter of an application for leave to intervene as Amicus Curiae by Prof. Oloka Onyango and 8 others, S. C. Civil Application No. 02 of 2016*) which the court laid down the following guides;-

1. Participation of *amici* is purely at the discretion of the court.
2. Amicus curiae can be important and relevant in matters where Court is of the opinion that the matter before it requires some kind of expertise which is in the possession of a specific individual.
3. The ultimate control over what the amicus can do lies exclusively with the Court.
4. The *amicus* must be neutral and impartial.
5. The submissions must be intended to give assistance to the court it would not otherwise enjoy.
6. Limited to engagement with matters of the law.
7. Submissions draw attention to relevant matters of law- useful, focused and principled legal submissions not favouring any of the parties.
8. The *amici* must have valuable expertise in the relevant area of law and general expertise in law does not suffice.
9. The points of law to be canvassed should be novel to aid development of jurisprudence

10. The participation must be in the wider interest of public justice.
11. The interest of the amicus is its 'fidelity' to the law.
12. An amicus should address court on points of law not raised by the parties but is of concern to the court.
13. Remind the court of legal matters which have escaped the court that may cause a wrong interpretation of law.
14. An *amicus* shall not introduce new/ fresh evidence.
15. Where in adversarial proceedings, parties allege that a proposed amicus is biased or hostile towards one or more of the parties, or where the applicant through previous conduct, appears to be partisan on an issue before the court the court will consider such an objection by allowing the respective part to be heard on the issue.
16. The court will regulate the extent of *amicus* participation in the proceeding to forestall the degeneration of amicus role to partisan role.
17. Whereas consent of the parties to the proposed *amicus* role is a factor to be taken into consideration, it is not the determining factor. Furthermore, objections raised by the parties is a factor to be taken into consideration but is not the determining factor.

In light of those guidelines, the trial court should be cautious in first establishing that the individual summoned fits that description and that the purpose for which he has been summoned is consistent with the role of *amicus curiae* as outlined. A witness should not be summoned at that stage to fill gaps in evidence for either party. In civil litigation, it is the parties to determine and identify the witnesses they need to support their respective cases and the court decides the case on basis of the evidence presented to it. It is not the business of court to find additional evidence for any of the parties for in doing so it risks descending into the arena.

The other concern surrounds the timing of the issues framed by the court. Framing of issues is necessitated that no party at trial is put to surprise. It guides the parties to the suit to adduce proper evidence during trial. In order to enable court make the right decision framing of appropriate issues is of crucial importance. Issues ordinarily arise when a material proposition of law or fact is affirmed by one party and denied by the other. According to Order 15 rule 3 of *The Civil Procedure Rules*, the court may frame issues from all or any of the following materials;-

- (a) allegations made on oath by the parties, or by any persons present on their behalf, or made by the advocates of the parties;
- (b) allegations made in the pleadings or in answers to interrogatories delivered in the suit; and
- (c) the contents of documents produced by either party.

It is clear from that provision that the obligation is cast on the Court to read the pleadings, listen to the evidence and then determine, with the assistance of the learned counsel for the parties, the material propositions of fact or law on which the parties are at variance. The issues on which the decision of the case shall depend, must be framed and recorded. The parties and their counsel are bound to assist the Court in the process of framing of issues. The duty of the counsel though does not belittle the primary obligation cast on the Court. It is for the presiding magistrate to exert himself or herself so as to frame sufficiently expressive issues. The object of an issue is to bring down the evidence, arguments and decision to a particular question so that there may be no doubt as to what the dispute is. Issues are framed for arriving at right decision of the case and to pinpoint the real and substantial points of difference. The correct decision of the civil litigation largely depends upon the correct framing of issues. The court is not only competent but also under an obligation to frame the issues, as per its understanding of the controversy between the parties.

Order 15 rule 5 (1) empowers the court at any time, before passing a decree, to amend the issues or frame additional issues on such terms as it thinks fit, and all such amendments or additional issues as may be necessary for determining the matters in controversy between the parties (see also *Kahwa Z. and Bikorwenda v. Uganda Transport Company Ltd* [1978] HCB 318). This is necessary because in some cases the court or counsel may notice some defect or inadequacy in the issues already framed or certain matters in controversy between the parties are left unnoticed while framing issues in the earlier occasion. Since the primary duty of framing proper issue rests with the magistrate, and the parties and their counsel are only required to assist the court in process of framing issues, situations may arise when in the process of writing a judgment, new issues may emerge which hitherto may have escaped the attention of the court. At whatever stage the before passing a decree the court feels it necessary, it can recast the issues after giving opportunity to the parties or their counsel to address it on the proposed amended issues.

When issues are recast, opportunity should be given to the parties to adduce fresh evidence if necessary. Framing of issues is not adjudicatory process nor it is a decisional process in itself. Framing of issues in the trial of the suit facilitates adjudication and decision in the case. They are framed to identify the crux areas of controversy and focus on them. The object of framing issues is to shorten the arena of dispute, and to ascertain the real dispute between the parties. The issues can be framed or altered at any stage thus framing of issues has to be a free exercise so long as the issues stem from the pleadings or evidence and bring out the points in controversy. It is in the interest of all the parties that appropriate issues encompassing the entire controversy and focusing the material aspects thereof are framed. Since the settlement of issues is the discretion of the trial Court, it cannot be interfered by this court, merely because one of the parties is displeased with the procedure adopted by the trial court. The file therefore should be returned to the trial court to conclude the proceedings.

Dated at Arua this 21st day of December, 2017

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Stephen Mubiru
Judge,
21st December, 2017.