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THE REPUBLIC OF UGANDA

IN THE HIGHCOURT OF UGANDA AT KAMPALA

(CIVIL DIVISION)

MISCELLANEOUS APPLICATION NO.589 OF 2019

(ARISING FROM CIVIL SUIT NO. 155 OF 2017)

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1. JOHN LUBEGA

2. PAUL MBOGO :::::::::::::::::::::::::::APPLICANTS/PLAINTIFFS

VERSUS

1. UGANDA BROADCASTING CORPORATION

2. ROBERT KAGORO :::::::::::::::::::RESPONDENTS/DEFENDANTS

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BEFORE: HON. MR. JUSTICE BASHAIJA K. ANDREW

RULING:

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John Lubega and Paul Mbogo (*hereinafter referred to as the 1st and 2nd Applicant, respectively*) brought this application against Uganda Broadcasting Corporation(UBC) and Paul Mbogo (*hereinafter referred to as 1st and 2nd Respondent, respectively*) jointly and severally, under Section 82 of the Civil Procedure Act Cap 71(CPA); Order 46 rule 1, 2, 4 and 8 Civil Procedure Rules (CPR) SI 71 -1; Order 52 rule 1 and 3 CPR; Section 98 CPA; seeking orders that this court reviews its decision made on 03/07/07/2019 transferring Civil Suit No.155 of 2017 to the Chief Magistrates'

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5 Court at Mengo for trial and that instead it be heard by the High Court; and that costs of this application be provided for.

The application is supported by the affidavit sworn by John Lubega, the 1st Applicant, based on several grounds. He mainly states that the Applicants filed HCCS No. 155 of 2017 seeking for special
10 damages of UGX7,193,100= being the cost of transcribing and translation of the alleged defamatory material against them; general damages for the defamation; exemplary/punitive damages for outrageous, reckless, false, aggravated and malicious publication against them; a permanent injunction restraining the defendants
15 from further publication of the alleged defamatory material; interest at 25% per annum from the date of judgment till payment in full, and costs of the suit.

The Applicants aver that on 03/07/2019 when the case came up for hearing, counsel for the Respondents raised a preliminary
20 objection to the effect that since in their plaint the Respondents/plaintiffs only specified special damages as UGX. 7,193,100 = which was the cost of transcribing and translation of the alleged defamatory material by Makerere University, the suit be

5 transferred, under Section 18 CPA, to Chief Magistrate's Court at
Mengo on ground that the value of the subject matter of the suit
pleaded is UGX. 7,193,100. That this court upheld the objection
and accordingly ordered for the transfer of the suit. That the
Applicant's counsel immediately applied for leave to appeal against
10 the order of transfer but the application was dismissed. That the
Applicants are aggrieved with the said order of transfer on the
ground that there is an error or mistake apparent on the face of the
record which needs to be reviewed.

The Applicants further contend that the reason for filing the suit
15 against the Respondents was to claim for general damages for the
tort of defamation and not to claim for special damages, which is
just the cost of transcribing of the defamatory matter complained of.
That it was thus an error apparent on the face of the record to hold
that the value of the subject matter of the suit is UGX. 7,193,100
20 when in fact the suit is grounded on general damages. That it was
further an error apparent on the face of the record to prejudge the
amount of general damages for defamation that would be awarded
to the Applicants/plaintiffs at the end of the trial as it would not

5 exceed UGX 50 million before the Magistrate's Court. Also, that no appeal has been lodged against the order of this court which ought to be reviewed; and that this application has been made without delay; and it is in the interest of justice and equitable that the order of this court dated 03/07/2019 be reviewed.

10 The Respondents opposed the application and filed an affidavit in reply sworn by Ms. Christine Mpumwire, a legal representative of the 1st Respondent company. She essentially states that their lawyers raised the preliminary objection regarding the jurisdiction of the court to hear the case and court ruled that the matter be

15 transferred to the Magistrate's Court as the most suitable court to hear the case. That the Applicants never included in their pleadings the value of the subject matter of the suit to warrant being tried by the High Court. That this court was therefore correct in referring the matter to the Magistrate's Court for determination.

20 Further, that parties are bound by their pleadings and that the Applicants only pleaded UGX 7,193,100= as amount claimed, which falls within the jurisdiction of a Magistrate's Court. That in any case, there is no law barring a Magistrate's Court from awarding damages

5 to the magnitude as claimed by the Applicants and as such the same can be awarded by a lower court and not necessarily by the High Court. That this application for review is thus greatly misconceived since there is no error apparent on the face of the record to warrant a review. That this court considered all factors,
10 including damages claimed, when arriving at a decision. That no sufficient ground to warrant a review in this particular case has been advanced. That instead the Applicants have the option of preferring an appeal against the ruling. That it is just and equitable that this application is dismissed with costs.

15 At the hearing of the application the Applicants were represented by *M/s. Bwire and Waiswa Advocates* while the Respondents were represented by *M/s. OSH Advocates*. Both counsel filed submissions to argue the application on court record and court has taken them into consideration in this ruling.

20 ***Determination:***

Section 82 CPA which governs applications for review provides as follows;

“Any person considering himself or herself aggrieved—

5 ***(a) by a decree or order from which an appeal is allowed by
this Act, but from which no appeal has been preferred; or
(b) by a decree or order from which no appeal is allowed
by this Act, may apply for a review of judgment to the
court which passed the decree or made the order, and
10 the court may make such order on the decree or order as
it thinks fit.”***

Order 46 CPR amplifies the above provisions by adding the
following;

15 ***“.....and who from the discovery of new and
important matter of evidence which, after the
exercise of due diligence, was not within his or her
knowledge or could not be produced by him or her at
the time when the decree was passed or the order
made, or on account of some mistake or error
20 apparent on the face of the record, or for any other
sufficient reason, desires to obtain a review of the
decree passed or order made against him or her,***

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***may apply for a review of judgment to the court
which passed the decree or made the order.”***

In ***Re Nakivubo Chemists (U) Ltd 1979] HCB 12*** and ***Mohamed Alibhai vs. Bukenya Mukasa SCCA No.56 of 1996 (UR)*** which considered the above provisions, the expression “aggrieved person”
10 was defined to mean a person who has suffered a legal grievance. Further, in ***Adonia vs. Mutekanga [1970] EA 429*** court held that such a person who is aggrieved may be a party to the suit or any third party may apply for review, but such third party must establish that he is an aggrieved person.

15 The instant application emanates from the decision of this court in HCCS No.155 of 2017 ordering for the transfer of the case to the Chief Magistrate’s Court at Mengo for trial. In ordering as such, this court was guided by the value of the subject matter of the suit stated in the pleadings, which fell well within the jurisdiction of a
20 Magistrate’s Court. The Applicants contend that they are aggrieved by the said order of this court on ground that it is an error or mistake apparent on the face of the record which ought to be reviewed. Their main contention is that in their pleadings, the

5 Applicants' claim for general damages is based on the tort of
defamation and not on the pleaded UGX 7,193,100= for special
damages, which was only the cost of translating and transcribing by
Makerere University of the alleged defamatory material complained
of in the suit. That this court erroneously based its order to transfer
10 the case on the value of the pleaded special damages when the suit
was grounded on general damages arising from the alleged
defamatory material. That the figure pleaded as special damages
was merely the cost of transcribing and translation as stated.

For their part, the Respondents supported the court's decision to
15 transfer the suit, arguing that the Applicants never included in
their pleadings the value of the subject matter of the suit to warrant
the case being tried by the High Court. That this court was correct
in referring the matter to the Magistrate's Court.

Court notes that this application is premised on the singular
20 ground of an error or mistake apparent on the face of the record.
What amounts to an "error apparent on the face of the record" is
well established. In ***Edison Kanyabwera vs. Pastori Tumwebaze***
SCCA No. 6 of 2004, at page 12, citing with approval ***A.I.R***

5 **Commentaries: The Code of Civil Procedure by Manohar and Chitaley Volume 5, 1908**; the Supreme Court instructively held as follows;

10 ***“It is stated that in order that an error may be a ground for review, it must be one apparent on the face of the record, i.e. an evident error which does not require any extraneous matter to show its incorrectness. It must be an error so manifest and clear that no court could permit such an error to remain on court record. The error may be one of fact, but it is not limited to matters of fact and includes also error of law.”*** [underlining mine for emphasis].

15 Similar position was adopted in ***F.X. Mubuke vs. UEB HCMA No.98 of 2005*** where the court held that;

20 ***“That for a review to succeed on the basis of error on the face of the record, the error must be so manifest and clear that no court would permit such as error to remain on the record. A wrong application of the law or failure to apply the appropriate law is not an error on the face of the record.”***

5 In the instant case, the Applicants filed HCCS No 155 of 2017
against the Respondents for, among other reliefs, general damages
for defamation. The Applicants also prayed for special damages of
UGX 7,193,100 = being the cost of transcribing and translation,
exemplary and/or punitive damages for alleged outrageous,
10 reckless, false, aggravated and malicious publication against the
Respondents /plaintiffs; a permanent injunction against the
defendants jointly and/or severally restraining them from further
publication of defamatory matter against the plaintiffs at 25% p.a
from the date of judgment till payment in full and costs of the suit.
15 As can be observed, apart from the special damages, no any other
prayer has any figure or amount attached to it in the Applicants'
pleadings.

It is the settled position of the law that the award of damages is the
discretion of court and general damages are awarded to compensate
20 someone for the non-monetary aspects of the harm suffered. In
Hall Brothers SS Co. Ltd vs. Young (1939)1 KB 754 at 756 (CA)
the court held;

5 **“‘damages’ to an English lawyer imports this idea, that
the sums payable by way of damages are sums which fall
to be paid by reason of some breach of duty or obligation,
whether that duty or obligation is imposed by contract,
by general law, or legislation.”**

10 Therefore, a party ought to, by pleadings, specify or give an
indication of the amount of the damages sought so as to bring the
cause of action in the jurisdiction of a particular court.

In addition, whereas the High Court is seized with both unlimited
original and appellate jurisdictions vested in it by the Constitution
15 under Article 139(1); the settled position of the law as was stated in
Munyangwa Nsibirwa vs. Kamunyanguzi [1977] HCB 35, is that
cases shall be filed in the lowest court competent to handle them.

The High Court has power to transfer a case filed in it where the
Court finds that the case can be conveniently tried in a subordinate
20 Court. See: ***Mohamed Bin Shebai vs. Mohamed Bin Mohamed
[1906 – 1908] 2 KLR 107 at 108.***

5 Most importantly and relevant to this case, the civil jurisdiction of
the Magistrates' Courts is specifically provided under **Section 207**
Magistrates Court Act (as Amended) as follows;

10 ***“(1) Subject to this section and any other written law, the
jurisdiction of magistrates presiding over magistrates’
courts for the trial and determination of causes and
matters of a civil nature shall be as follows—***

15 ***(a) A chief magistrate shall have jurisdiction where
the value of the subject matter in dispute does not
exceed fifty million shillings and shall have
unlimited jurisdiction in disputes relating to
conversion, damage to property or trespass;***

***(b) A magistrate grade I shall have jurisdiction
where the value of the subject matter does not
exceed twenty million shillings;***

20 ***(c) A magistrate grade II shall have jurisdiction
where the value of the subject matter in dispute does
not exceed five million shillings;***

5 ***(2) Notwithstanding subsection (1), where the cause or matter of a civil nature is governed only by civil customary law, the jurisdiction of a chief magistrate and a magistrate grade I shall be unlimited.***

10 ***(3) Whenever for the purposes of jurisdiction or court fees it is necessary to estimate the value of the subject matter of a suit capable of a money valuation, the plaintiff shall in the plaint, subject to any rules of court, fix the amount at which he or she values the subject matter of the suit; but if the court thinks the relief sought is wrongly valued,***
15 ***the court shall fix the value and return the plaint for amendment.”***

Section 207 (5) MCA (supra) emphasizes the pecuniary jurisdiction of a Magistrate’s Court, which may grant any relief which it has power to grant under the Act or under any other written law and
20 make such orders as may be provided for by the Act or any written law in respect of any case or matter before the Court. This essentially means that a Magistrate’s Court cannot grant any relief beyond its civil jurisdiction. It also implies that the Applicants in

5 the instant case, if at all they succeeded in their claim, would not obtain a relief beyond UGX.50 million which is the maximum that a Chief Magistrate's Court can award.

The settled position is that where general damages are claimed but not quantified, they could not be used as the basis for calculating
10 the value of the subject matter. This position was articulated in ***National Medical Stores vs. Penguins Ltd HCT -00-CC-CA-29-2010*** at page 5 where the court held that;

"I agree with counsel for the respondent that the general damages were not quantified and therefore could not be used as a basis for calculating the value of the subject matter. The value of the subject matter as noted in the
15 ***plaint was the sum of UGX 13,914,088/= which fell within the pecuniary jurisdiction of the Magistrate Grade One. I therefore find that the trial Magistrate had the***
20 ***jurisdiction to entertain the suit.***" [emphasis added].

The above case appears to be on "all fours" in principle with the instant case. Clearly, the Applicants herein did not plead to give an indication as to the value of the subject matter in order to bring it

5 exclusively within the jurisdiction of the High Court. The only ascertainable pecuniary value stated in the plaint is in respect of special damages of UGX 7,193,100= which squarely falls within the pecuniary jurisdiction of a Magistrate's Court.

It is not up to this Court to surmise that the value of the subject
10 matter of the suit is above the pecuniary jurisdiction of the Magistrate's Court, merely because general damages are generally claimed in the plaint. In ***Kashibai vs. Sempagama [1967] EA 16***, the court took similar view that facts must be pleaded with precision and certainty and must not be left to be inferred from
15 vague and/or ambiguous expressions or from statements of circumstances inconsistent with different conclusions. Similarly, in ***Macharia vs. Wanyioke [1972] EA 264***, the court held that any fact which a party is entitled to prove at the trial is relevant and therefore material to be pleaded even though it may relate only to
20 the quantum of damages. The law places the onus upon the party pleading to state all material facts including the fact which show that the court has the necessary jurisdiction. The settled position was stated in ***Busuti vs. Busoga District Administration (1971)***

5 **1 URL 179**, that the plaintiff has an obligation to plead all material facts including facts showing that the court had jurisdiction.

This court cannot, but agree with the above decisions, and only adds that a pleading does not contain material facts required, if it only refers to them generally, as was in the instant case. For these
10 reasons, it is in no doubt that this Court had no other option but to order for transfer of the case to the Magistrate's Court for trial.

Counsel for the Applicants advanced the argument that by ordering for the transfer of the case, this court had pre-determined that general damages would not exceed what the Magistrate's Court
15 would award as the maximum, which is only UGX.50 million. Indeed, that would, by necessary implication, be the position in the event that the Applicants succeeded in their claim. Nonetheless, as already stated above, there was no any indication in the pleading of the pecuniary value of the subject matter of the suit- defamation.
20 The Applicants should have specified the range, or at least given an indication of the amount claimable as general damages in the circumstances, and only be required to lead evidence at the trial to prove the amount of damages they claimed in pleadings. See:

5 ***Takiya Kaswahili & A’ nor vs. Kajungu Denis, CACA No.85 of 2011.***

Besides the above, general damages are awarded in the discretion of the court. It ought not to be assumed that just because they are claimed in the pleadings, general damages must necessarily be
10 awarded by the Court. The Court exercises its discretion to award general damages judicially, taking into account the applicable principles of the law and facts of the case, which include the pleaded or indicated pecuniary value of the subject matter of the suit. Where the award of general damages is premised solely on the
15 exercise of discretion by the Court, it does not operate as an automatic right that it must accrue to the party claiming the same. Court may or may not award the general damages.

Another critical factor to consider are the fees paid at the filing of the main suit vide HCCS No. 155 of 2017, which is quite indicative
20 of the value of the subject matter of the suit and by implication the pecuniary value of the Applicants were claiming as general damages. It all fall squarely within the range of the pecuniary jurisdiction of

5 the Magistrates' Courts. This Court was thus justified to order for the transfer of the suit to the lowest court competent to handle it.

Also, worthy of emphasized as a matter of law, is that parties are bound by their pleadings. See: **Jani Properties Limited vs. Dar es Salaam City Council (1966) EA 281; Struggle (U) Ltd vs. Pan**

10 **African Insurance Co. Ltd (1990) KALR 46 - 47.** The Applicants in the instant case, only pleaded what they sought to recover and never pleaded the specific value of the subject matter of their claim other than for special damages. They cannot now be heard to claim that the value of the subject matter exceeds the pecuniary limits of

15 the Magistrates' Courts when such value was never stated. The Respondents, as the opposite parties and indeed this court, only had notice of the precise amount of claim stated in the Applicants pleadings. That was the precise case the Respondents would meet at the trial. Where general damages were not quantified, they could

20 not be used as a basis for calculating the value of the subject matter. The assumption of how high the general damages might be cannot be used to determine the jurisdiction of the proper court to determine such a case. See: **Daniel Oboth vs. the New Vision**

5 ***Printing and Publishing Corporation Civil Appeal Number 12
of 1990.***

If the subject matter of the suit is not clearly spelt out in the pleadings, then an estimation of what might be awarded as general damages cannot be used as a measure of what the value of the
10 subject matter is. It is thus not true, as claimed by the Applicants, that transferring the suit would be delimiting them on general damages they would have asked for. They never asked for any specific amount in their pleadings. They are bound by their pleadings.

15 Given the above reasons, no error or mistake apparent on the face of the record has been established by the Applicants. It would appear clearly from their application that they only seek to challenge what they perceive as an erroneous decision of this Court, which is quite different from what constitutes an error apparent on
20 the face of the record. For anything to amount to an “error apparent on the face of the record”, it must be such that it would not require extraneous material to establish it. The law is that if appears to a party that a Court made a wrong decision given the material and

5 information at its disposal, then such a party ought to have good grounds for appeal and not review. This position is re-affirmed in ***Godfrey Sentongo vs. Stanbic Bank (U) Ltd HCT- 00-CC-0059-2007*** in which Court cited the case of ***Abasi Balinda vs. Frederick Kangwamu and Another (1963) EA 557.*** Egonda-
10 Ntende J, (as he then was) rightly held that a point may be a good ground of appeal and there may well be good grounds of appeal but such good grounds can hardly form the basis for review of that decision under Order 46 rules 1 and 8 CPR.

15 In the instant case, the Applicants only seem to fault this Court for having made an erroneous decision by ordering for the transfer of the suit to the Magistrate's Court for trial, basing on the pleaded amount. The Applicants believe this Court was wrong to make the order because their claim was for general damages arising out of
20 the alleged cause of action in defamation. That being the case, the Applicants' remedy lies in appealing against the ruling of this Court since their dissatisfaction stems from their belief that this Court erred in law and fact to have ordered for the impugned transfer.

5 For the foregone reasons, this application does not disclose an error
or mistake apparent on the face of the record to warrant a review.
The application is dismissed with costs to the Respondents.

BASHAIJA K. ANDREW

JUDGE

29/04/2020

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