

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL DIVISION
CIVIL SUIT NO. 51 OF 2021**

**SSENTAMU JOSEPH ::: PLAINTIFF
VERSUS
JIBU CORPORATE UGANDA LIMITED ::: DEFENDANT**

BEFORE: HON. JUSTICE BONIFACE WAMALA

RULING ON A PRELIMINARY OBJECTION

Introduction

[1] The Plaintiff instituted this suit against the Defendant seeking several reliefs based on negligence, compensation as assessed by the Directorate of Gender, Community Services and Production, special damages, general damages, interest and costs of the suit. When the suit came up before the Court for the first time, Counsel for the Defendant indicated that they intended to raise a preliminary objection regarding the propriety of the suit before this Court. It was agreed that the objection be raised by way of written submissions. Both Counsel made and filed written submissions which have been adopted by the Court and taken into consideration in the course of determination of the points of law raised by either side.

Representation

[2] At the hearing, the Plaintiff was represented by Mr. Anthony Bazira and Mr. Pius Kitamirike while the Defendant was represented by Mr. Laston Gulume.

Submissions by the Defendant’s Counsel

[3] Counsel for the Defendant submitted that the Plaintiff’s action and plaint is incompetent and procedurally improper before the Court. Counsel pointed out that the Defendant in Paragraph 3 of the Written Statement of Defence (WSD) indicated that they would raise a preliminary point of law at the earliest to the effect that “the Plaintiff’s action is procedurally improper before the court, as an action for worker’s compensation disguised in a claim for negligence, the

claim is frivolous, vexatious and abuse of court process”. Counsel submitted that claims for worker’s compensation and occupational safety and health, are majorly governed by the **Workers Compensation Act Cap 225** and the **Occupational Safety and Health Act 2006**. Both laws expressly vest the jurisdiction of such matters in a Magistrate Court. Counsel referred to **Sections 1(a) and 14(2) of the Workers Compensation Act**.

[4] Counsel for the Defendant further submitted that the same Magistrate’s Court is vested with original jurisdiction in matters for enforcing Occupational Safety and Health under **Section 110** of the **Occupational Safety and Health Act**. Counsel also submitted that the original jurisdiction of court for torts arising out of employment matters is vested in the magistrate’s courts. Counsel relied on the decision in **Kasozi v Mpigi District Local Council & Anor Civil Revision No. 48 of 2016** where it was held that **Section 93 (6)** of the **Employment Act** when read together with **Section 1 (a)** of the **Workers Compensation Act** establishes the jurisdiction vested in Magistrates Courts for employment torts and workers’ compensation claims.

[5] Counsel for the Defendant submitted that the gist of the instant preliminary objection was that the Plaintiff by his action seeks to circumvent express provisions of the law by invoking the unlimited jurisdiction of the High Court, which ought to be exercised in accordance with the law. Counsel invited the Court not to sanction such an irregularity. Counsel further argued that the legal and policy framework for strictly enforcing procedural requirements which equally applies to the question of access to court and jurisdiction, has been underscored in a number of court decisions. Counsel referred the Court to **Basile Difasi & 3 Others vs. The National Unity Platform & 8 Others Miscellaneous Cause No. 226 of 2020; Uganda Broadcasting Corporation vs. Ruthura Agaba Kamukama Miscellaneous Application No. 638 of 2014; and Uganda Revenue Authority vs. Rabbo Enterprises (U) Ltd & Another Civil Appeal No. 12 of 2004; [2017] UGSC 20**.

[6] Counsel concluded that the overarching just, equitable and soundly legal approach of the courts is not to allow litigants to render *statutory provisions meaningless and non-existing* as was held by Justice Ssekaana in ***Basile Difasi & 3 Others vs. The National Unity Platform & 8 Others (supra)***. A litigant is bound to follow the express provisions of the law as to forum for resolution of their disputes. The Plaintiff in the instant case irregularly seeks to do otherwise. Counsel argued that the Plaintiff's action herein is frivolous, vexatious and an abuse of court process. Counsel prayed that the preliminary objection be upheld and the Plaintiff's action be dismissed with costs to the Defendant.

Submissions in reply by the Plaintiff's Counsel

[7] Counsel for the Respondent opposed the preliminary objection raised by the Plaintiff's Counsel basing on three grounds, namely that;

- a) The applicant has no locus to raise the preliminary objection;
- b) The suit involves a Joinder of causes of action; and
- c) This court has jurisdiction under **Article 139** of the Constitution.

Defendant's Locus to raise the preliminary objection

[8] Counsel for the Plaintiff submitted that the procedure of raising any objection as to the jurisdiction of court is provided for under **Order 9 rule 3(g) of the Civil Procedure Rules**, and the same is reechoed in the **Uganda Civil Justice Bench Book**, published by the Law Development Centre with support from the Judiciary, at **page 10**. Counsel submitted that according to the rules, despite filing a defence, the Defendant was required to file a formal application within the time limited for service of a defence seeking a declaration that this court has no jurisdiction over the subject matter in accordance with Order 9 rule 3(2) and (3) of the CPR. Counsel referred the Court to the decision in ***Augustine Kasozi versus Arvind Patel Miscellaneous Application No. 910 of 2019, at page 5, 6, 7 and 8.***

[9] Counsel submitted that it follows from the above legal position that the Applicant ought to have filed a notice of intention to defend the proceedings or the Written Statement of Defence like it did and thereafter, a chamber summons supported by an affidavit in support, within 15 days of receipt of summons to file a defence, seeking a declaration in the circumstances of the case that the court had no jurisdiction over the defendant in respect of the subject matter or relief or remedy sought in the action. Counsel relied on the **Uganda Civil Justice Bench Book**, at **page 11**, where it is stated that the filing of a defence prior to filing of the application is optional and where a defence is filed, such filing will not be a waiver to filing of the application. The consequence of failure to file an application under *Order 9 rule 3(2) of the CPR* is specifically stated under **Order 9 rule 6 of the Civil Procedure Rules**. Counsel submitted that where the rules provide for a consequence upon failure to do a certain act, then the provision is read as mandatory.

[10] Counsel concluded on this point that since there was no application to dispute the jurisdiction of the court, the court should find that the Defendant has no locus standi to raise this preliminary objection. Counsel prayed that since the Defendant did not make the necessary application, the filed Written Statement of Defence should be treated as a submission to the jurisdiction of this court.

The suit involves a Joinder of Causes of Action thus rightly before this Court

[11] Counsel for the Plaintiff submitted that **Civil Suit No. 51 of 2021** consists of a joinder of causes of action against the former employer of the plaintiff, the defendant company. It was legally permissible for the plaintiff to unite several causes of action against the defendant and is, in total, claiming for **UGX. 474,039,390/=**. The causes of action are two; Negligence and Compensation as assessed by the Directorate of Gender. Counsel submitted that Order 2 rule 4 of the CPR permits such joinder of causes of action. Counsel also relied on

Odger's Principles of Pleading and Practice in Civil Actions in the High Court of Justice, 22nd Edition, D.B Casson and I.H Dennis, page 31.

[12] Counsel submitted that the evidence which shall be led at trial regarding the findings of the medical doctors on compensation for the plaintiff's health shall have a bearing on the disposal of the claim for negligence. The two causes of action need to be disposed of at the same time to avoid a multiplicity of suits. It would not be practical to sever the causes of action by filing two separate suits i.e. one in the Magistrates Court and another, in the High Court. Counsel relied on ***Mohan Kiwanuka versus Asad Chand SCCA No. 12/2002, page 6-7*** and concluded that the suit was rightly before the Court.

High Court has jurisdiction under Article 139 of the Constitution.

[13] Counsel for the Plaintiff submitted that this court has jurisdiction to hear the suit for negligence and compensation. Counsel relied on the case of ***Absa Bank Uganda Limited & 2 Others versus Electro Maxx (U) Limited & Another, Miscellaneous Application No. 241 of 2020*** for a restatement of the jurisdiction of this court. Counsel stated that Section 14 of the Workers Compensation Act did not oust the jurisdiction of the High Court granted under **Article 139 of the Constitution of the Republic of Uganda**. Counsel argued that for a provision of the statute to oust the jurisdiction of the High Court as provided for in the Constitution, it must expressly state so, which is not the case with **the Workers Compensation Act**.

[14] Counsel further argued that the Magistrates court is not a specialized court as compared to the Tax Appeals Tribunal which handles tax matters and the Industrial Court which specifically handles labour disputes. Counsel referred the Court to the decision in ***David Kayondo versus The Co-operative Bank (U) Limited, Civil Appeal No. 1091 of 1992*** in which the position on ouster of the High Court's original unlimited jurisdiction was stated; which position was subsequently upheld in the case of ***Kameke Growers***

Cooperative Society Limited versus North Bukedi Co.operative Union, SCCA No. 8/1994.

[15] Counsel submitted that the decisions cited by Counsel for the Defendant of ***Uganda Revenue Authority versus Rabbo Enterprises (U) Limited & Another (supra); Uganda Broadcasting Corporation versus Ruthura Agaba Kamukama, M.A No. 638/2014; Justine Kasozi versus Mpigi District Council & Another Civil Suit No. 7/2008;*** and ***Ntwatwa Jackson versus Seyani Brothers Civil Appeal No.2/2014*** are distinguishable and not applicable to the facts and circumstances that are before this Court. Counsel prayed that the preliminary objections be rejected by the Court.

[16] Counsel for the Defendant filed submissions in rejoinder which I have also taken into consideration.

Determination by the Court

[17] I will begin with the issue raised by the Plaintiff's Counsel regarding the Defendant's locus standi to raise the preliminary objection. The contention by Counsel for the Plaintiff is that the procedure for disputing jurisdiction is specifically provided for under Order 9 rule 3 of the CPR and upon failure to follow that procedure, any defence filed by such a defendant will be treated as a submission by the defendant to the jurisdiction of the court. *Order 9 rule 3(1) (g) of the CPR* provides –

“A defendant who wishes to dispute the jurisdiction of the court in the proceedings by reason of any such irregularity as is mentioned in rule 2 of this Order or on any other ground, shall give notice of intention to defend the proceedings and shall, within the time limited for service of a defence, apply to the court for ... a declaration that in the circumstances of the case the court has no jurisdiction over the defendant in respect of the subject matter of the claim or the relief or remedy sought in the action”.

[18] *Rule 2 of Order 9 of the CPR* provides as follows:

“The filing of a defence by the defendant shall not be treated as a waiver by him or her of any irregularity in the summons or service of the summons or in any order giving leave to serve the summons out of the jurisdiction or extending the validity of the summons for the purpose of service”.

[19] Order 9 rule 5 of the CPR provides that;

“A defendant who makes an application under sub rule (1) of this rule shall not be treated as having submitted to the jurisdiction of the court by reason of his or her having filed a defence; and if the court makes no order on the application or dismisses it, the notice shall cease to have effect and in that case, subrule (6) of this rule shall apply as if the defendant had not made any such application”.

[20] Order 9 rule 6 of the CPR provides:

“Except where the defendant makes an application in accordance with subrule (1) of this rule, the filing of a defence by a defendant shall, unless the defence is withdrawn by leave of the court under rule 1 of Order XXV of these Rules, be treated as a submission by the defendant to the jurisdiction of the court in the proceedings”.

[21] It is clear from the above provisions that a defendant who wishes to dispute jurisdiction of a court has two options; either to file a notice of intention to defend the suit or to file the written statement of defence itself. But whichever option the defendant takes; he/she must file an application seeking for a declaration that the court has no jurisdiction in the matter. The latter is mandatory. According to rule 6 of Order 9 of the CPR, where a defendant has filed a defence but has not filed an application to dispute jurisdiction, “the filing of the defence shall ...be treated as a submission by the defendant to the jurisdiction of the court in the proceedings”. Such a defendant would, therefore, be estopped from raising any further dispute over jurisdiction of the

court in the proceedings. This is the logical interpretation of the provisions under Order 9 rule 3 of the CPR and one that is consistent with the holding in ***Mark Graves v Balton (U) Ltd, HCMA No. 158 of 2008***. I also refer to the decisions in ***Anthony Harris Mukasa V Dr. Lulume Bayiga Election Petition Appeal-2007/18*** and ***Bitamisi Namuddu versus Rwabuganda Godfrey, Supreme Court Civil Appeal No. 16/2014*** for the position that where the rules provide for a consequence upon failure to do a certain act, then the provision is read as mandatory and not directory.

[22] In the circumstances, I agree with Counsel for the Plaintiff that having submitted to the jurisdiction of the court, the Defendant herein is barred from disputing the court's jurisdiction contrary to the established law and procedure. I would therefore uphold the point of law raised by Counsel for the Plaintiff and the same would suffice to overrule the preliminary objection raised by the defence Counsel.

[23] However, for completeness, let me also pronounce myself on the substance of the preliminary objection raised by the defence Counsel.

[24] I will start by pointing out that the position of the law as stated by Counsel for the Defendant on special jurisdiction granted to a particular court or tribunal is correct. But the said position is not applicable to the circumstances of the present case and the same was misapplied by defence Counsel to the present case. It is true that under *Section 14(2) of the Workers Compensation Act*, all "claims for compensation under this Act, ... arising out of proceedings under this Act shall be determined by the Court, whatever the amount involved". And "court" under the Act means "a magistrate's court". But as stated in the provision, that applies where the claim for compensation arises out of proceedings under the Act. In other words, it is not every time the Workers Compensation Act is invoked that Section 14(2) thereof is called into action. It is only when the claim falls squarely within the ambit of the Act.

[25] As such, it is possible for a party to bring an action that contains a joinder of causes of action and same may be filed in any court that is endowed with jurisdiction. As ably submitted by Counsel for the Plaintiff, Order 2 rule 4 of the CPR permits a plaintiff to unite in the same suit several causes of action against the same defendant. The Plaintiff herein shows that his action is a joinder of two causes of action; one based on the Workers Compensation Act and the other based in negligence. This is clear from the plaint and I accordingly agree with the argument by the Plaintiff's Counsel.

[26] I should also point out that it is not correct as stated by Counsel for the Defendant that the original civil jurisdiction in matters brought under the Occupational Safety and Health Act 2006 is vested in the magistrates' courts. Section 110 of the Occupational Safety and Health Act cited by the defence Counsel is in respect of criminal offences and is thus inapplicable to the present case. This supports the Plaintiff's assertion that the present suit consists of a joinder of causes of action and cannot be affected by the provision under section 14(2) of the Workers Compensation Act.

[27] It was argued by Counsel for the Defendant that the cause of action in negligence pleaded by the Plaintiff is a tort arising from an employment contract whose jurisdiction under Section 93(6) of the Employment Act is vested with the Magistrates Courts regardless of the silence of the meaning of "court" in the Act. Counsel referred the Court to the decision in ***Kasozi v Mpigi District Local Council & Anor Civil Revision No. 48 of 2016***. In reply, Counsel for the Plaintiff relied on the Court of Appeal decision in ***Engineer John Eric Mugyenzi versus UEGCL, Civil Appeal No. 167 of 2018*** in which the controversy as to which "court" is referred to under Section 93(6) of the Employment Act was resolved. The Court of Appeal held that the expression "court" in the said provision means a court of judicature or a subordinate court and does not refer to the Labour Officer or the Industrial Court. There is, therefore, no basis for defence Counsel to argue that trial of a tort arising out of

an employment contract is restricted to a magistrate's court under Section 93(6) of the Employment Act. This argument by Counsel for the Defendant is devoid of any merit.

[28] It is also the true position of the law that the High Court is vested with original unlimited jurisdiction by virtue of Article 139 of the Constitution. It is further the law that for a provision of a statute to oust the jurisdiction of the High Court as provided for in the Constitution, it must state so expressly or by clear implication. The same cannot be presumed. This position is supported by a number of decided cases to which the Court was referred by the Plaintiff's Counsel. These include ***David Kayondo versus The Co-operative Bank (U) Limited, Court of Appeal Civil Appeal No. 1091 of 1992; Kameke Growers Cooperative Society Limited versus North Bukedi Co-operative Union, SCCA No. 8/1994; Uganda Revenue Authority versus Rabbo Enterprises (U) Limited & Another, SCCA No. 12 of 2004 [2017] UGSC 20.***

[29] In the premises, the argument by the Defendant's Counsel that the present suit is improperly before this Court on account of jurisdiction is flawed. The suit is properly before the Court and the Court is seized with the jurisdiction to entertain the same. For the reasons above, the preliminary objection raised by the defence Counsel is found to be devoid of any merit and is overruled with costs. It is so ordered.



Boniface Wamala

JUDGE

12/04/2022