

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT
KAMPALA
CIVIL SUIT NO. 261/93**

MBABALI MUYANJA MOHAMED:.....PLAINTIFF

VERSUS

UGANDA COMMERCIAL BANK:.....DEFENDANT

BEFORE: THE HON. MR. JUSTICE G.M. OKELLO

ORDER:

This application was brought under 037 rr 1,2 and 11 of the CPR and section 101 of the CPA. It sought an order for a temporary injunction to restrain the defendant/Respondent from selling the Plaintiff/Applicant' s property. It also asked for cost of the application .

The grounds of the application were inter alia, that the defendant had agreed with the plaintiff that the sale of suit property would be deferred under a new terms of payment under the second loan. That the sale of the Plaintiff's property was premature and unlawful as the statutory Notice was not issued.

The application was supported by an affirmation of the Applicant/Plaintiff dated 20/4/93-

At the commencement of the hearing of the application, counsel for the defendant/Respondent raised a preliminary objection. He argued in effect that the purported head suit was filed without first serving the defendant with the required statutory Notice of Intention to sue. That failure to comply with that mandatory legal requirement rendered the head suit void abinitio. He relied on WIG vs. Kaferu (1974) EA 477 at 480 where it was stressed that the Notice under section 1 of Act 20/69

was mandatory and that any failure to give it would be fatal to any proceedings. He also cited K.C.C. vs. NULIYATI (1974) EA 400 where SPRY V-P said at page 402 that once the question of Notice under section 1 of Act 20/69 was put as a defence. The onus was on the plaintiff to prove due delivery thereof.

The learned counsel submitted that in the instant case, there was no delivery of such a statutory Notice. He prayed that the application should be dismissed with cost failure to give the Notice rendered the head suit void abinitio. That the application was therefore not supported by the existing suit.

Mr. Nkuruziza for the Applicant Plaintiff concede that there was no delivery of the necessary statutory, Notice of Intention to sue as required by section 1 of Act 20/69.

It is pertinent to hear in mind that one of the essential conditions for application for a temporary injunction 0.37 rr 1, 2 and 11 of CPP is the existence of a head suit before an application of that type can be filed.

In the instant case it was admitted that the head suit was filed without first serving on the defendant/Respondent the necessary statutory Notice of intention to sue as require under section 1 (1) (c) of the Civil procedure and Limitation (Misc. Prov.) Act 20/69. This section is mandatory as was rightly pointed out by counsel for the Respondent. Failure to comply with it is fatal to the proceedings as was stated in Nic. Vs. Kaferu above. The effect of failure is that it rendered the head suit void abinitio.

Another condition for grant of a temporary injunction is the likelihood of the applicant succeeding in the head suit. In the instant case, a suit which was filed without due compliance with the mandatory of civil procedure (Misc. Provision) Act 20/69 was most unlikely to Succeed. Consequently application for a temporary injunction based on such a void suit cannot simply stand because it is not supported by an existing suit as required by 037 r. of the CPR.

For the reason given above, the objection is upheld. The application is therefore dismissed with cost to the Respondent.

G.M. OKELLO

JUDGE

12/5/93