

THE REPUBLIC OF
UGANDA

IN THE HIGH COURT
OF UGANDA AT
KAMPAL

MISCELLENEOUS
APPL. NO. 37 OF 1993

PERAGIO
MUNYAGIRA:.....
.....A
PPLICANT

VERSUS

ANDREW Y.
MUTAYITWAKO:.....
.....RE
SPONDENT

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

RULING:

This application was brought by Notice of Motion which cited section 18 of the Civil Procedure Act the law under which it was brought. It sought an order of this court to transfer Mengo civil suit

No. G.K. 1056/91 from
the Chief Magistrate's
court of Mengo to this
court for trial. It was
based on the ground
that:-

"the
quantum
of
damages
sought
by the
applicant
exceeds
the
jurisdiction
of
the
Chief
Magistrate's
Court."

The application
was supported by an
affidavit of Mr. E.
Mugabi as counsel duly
instructed to handle the
case on behalf of the

plaintiff.

The back ground of the case is brief. The application was first set down for hearing on 12/5/93. On this date Mr. Mugabi appeared for the applicant and Mr. Nakana Muwayire for the Respondent. At the instance of Mr. Muwayire, the hearing of the Application was adjourned to today 25/5/93 to five Mr. Nakana Muwayire time to study the case. His clerk had not filed the relevant documents in the case. Counsel was fresh documents by counsel for the applicant.

On 26/5/93 when the application was called for hearing, both parties and their counsels were absent, I decided to stand down the case for up 9.30 a.m. hopefully the parties and their counsels would appear. Mugabi appeared at 9.35

when I was waiting an order dismissing the application for non appearance of the applicant. He explained that he delayed receiving judgment from another judge.

In the letters of justice, I allowed Mr. Mugabi to present his application even though the Respondent was absent. This is what Mr. Mugabi said.

“I am applying that the application be allowed and the order be made transferring the case to High Court. That is all”

I must state that this application was in my view handled half-heartedly by counsel for the Applicant.

First, counsels are expected to cite the provisions of the law under which they bring their application to court. Failure to do renders the application defective. This results in the

application being
dismissed.

In Odongkara vs
Kamada (1968) EA 210,
the plaintiff applied by
notice of motion to
amend the plaint by
substituting the party but
did not cite the rule
under which the
application was made.
The application was
dismissed for being
defective since it did not
specify the rule under
which the application
was brought.

In the instant case,
the application brought
the application by notice
of motion seeking an
order of this court to
transfer a civil suit from
the magistrates court to
the civil procedure Act.
The application however
did not cite the rule
under which the
application was brought
under action 18 of the
CPA. All applications to
the court save where
otherwise expressly
provided for under the

civil procedure Rules are brought by notice of motion under 048 r1 of the CPR. This must be cited. On the principle in Odongkara above, this application is defective for failure to cite the rule under which it was brought to court.

Secondly the application was not presented to court. Counsel simply stated that “I am applying that the application be allowed and the order he made transferring the case to the High Court.” that is not enough. Counsel is expected to formally present his application and argued it. This was not done. For the reasons given above, the application must and is hereby dismissed. Since counsel for the Respondent of the Respondent himself did not appear, I make no order as to cost.

G.M OKELLO
JUDGE

27/5/93