

**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA  
HOLDEN AT MBALE**

**HCT-04-CV-MA-0174-2013  
(Original HCT-04-CV-CS-004/2013)**

**PETRONILLA OMAL OKOTH.....APPLICANT  
VERSUS**

**1. GODFREY OBBO ONDHORO  
2. GABRIEL OBBO KATANDI.....RESPONDENTS**

**BEFORE: THE HON. MR. JUSTICE HENRY I. KAWESA**

**RULING**

The applicant brought this application by Notice of Motion. Applicant seeks leave to amend the plaint in HCCS 004/2013;

He further seeks leave to transfer CS 004-2013 to the Chief Magistrate's Court of Tororo and costs to be provided.

The grounds raised in the Notice of Motion are five as herebelow.

- (i) That the applicant is of the considered view that the correct value of the suit and is approximately shs.17 million shillings.
- (ii) That the corrected value of the suit land shs. 17 million be inserted in paragraph 22 of the plaint by way of amendment.
- (iii) That the Applicant is basically seeking for the declaration of ownership of the suit land and trespass.
- (iv) That the head suit can be conveniently disposed off by the Magistrate Grade I Tororo Chief Magistrate's Court.

- (v) That the ends of justice will be served if the suit is transferred for disposal in the Chief Magistrate's Court of Tororo.

The application was supported by the affidavit of the applicant **PETRONILLA OMAL OKOTH**; which I will not reproduce here but which counsel for applicant reviewed in his submissions.

Both respondents filed affidavits in reply in which they separately opposed the application. Both allude to the fact that the application lacks merit and should be rejected.

When the matter came for hearing on 27<sup>th</sup> August 2013, **Counsel Majanga Ben** for applicant went through the motion, and supporting affidavit, and argued that; on the 1<sup>st</sup> ground the applicant is of the opinion that the value of suit land is approximately 17 million. That on the 2<sup>nd</sup> ground applicant seeks to insert 17 millions in paragraph 2 by way of amendment. That on ground 3 he seeks declaration of ownership of the suit land. Fourthly that the head suit can be conveniently disposed of by Grade I or Chief Magistrate Tororo. Fifthly that the ends of justice will best be served if the suit is heard in Tororo.

Counsel informed court that this application is under O.6 r.19 CPR and section 18 CPA- for the transfer.

In answer to the affidavit in reply he stated that the suit is seeking orders to cancel the certificate of Title issued in favour of defendant. He stated that according to the Practise Direction 1/2006 Direction 4 provides that Magistrates Courts shall apply Land Tribunal rules with necessary modifications hence the fear that

Magistrate's Court has no power to cancel Titles is covered under the above rules. He quoted the case of *AMTAREKRERA V. JOHN NTATE HCCS 1474 OF 1986*, where court granted an order to transfer the case to Mbarara because the witnesses were based in Mbarara and were civil servants. He prayed that court grants the application.

**Mubiru Kasozi** for 1<sup>st</sup> Respondent argued in rebuttal that the first ground was full of speculation since applicant is not an expert in valuation to put the value at 17 million. On the 2<sup>nd</sup> ground he attached the order under which the application is made saying the value of land is not the matter of controversy but rather ownership. On the 3<sup>rd</sup> ground he argued that the land is under the RTA, a leasehold. Section 177 RTA grants jurisdiction of altering Title or making any entry to the High Court.

Fourth ground was attacked and counsel brought in the issue of limitation. He referred to section 5 of the Limitation Act which bars any action after expiry of five years. That the right to bring an action accrued in 1947 which is over 20 years. Section 6 of the act emphasizes the element of possession, he argued that plaintiffs were not in possession for over 20 years. He prayed i.e. court finds that the action is time barred. He prayed that court dismisses the application and the head suit.

**Emmanuel Ochen** for 2 respondent associated himself, to the submissions of his colleague but added that the High Court has all the jurisdiction that the applicant is trying to find in the Chief Magistrate's Court. He pointed out that it would be a waste of time to transfer the suit. He prayed for dismissal of the application.

In cross reply, Counsel for applicant said that the issue of limitation was unfairly brought in and should await the main suit. He however referred court to paragraph

18 and 19 of the plaint where plaintiff discovered that fraud was committed. He stated that time starts running when fraud was discovered; he submitted that the main suit is not barred by time. He maintained his earlier submissions and prayed that court grants the application.

Having reviewed the pleadings and submissions by counsel on the same, the following issues arise for determination:

1. Whether plaintiff/applicant is entitled to leave to amend under O.6 r.19 as prayed.
2. Whether the head suit should be transferred to the Courts at Tororo for trial.
3. Whether the head suit is time barred.

I resolve the issues as here below.

**Issue 1: Whether the applicant is entitled to leave to amend the plaint under O.6 r.19.**

The rule provides that:

*“The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties.”*

The catch word for our purposes is “the real questions in controversy”

According to applicant, he seeks to amend paragraph 22 of the plaint by inserting there the value of shs.17 million instead of shs.60,000,000 /= millions which appears on the plaint.

The respondents in their affidavits did not see much controversy in the proposed amendment and 1<sup>st</sup> respondent in paragraph 4 called it speculative, while 2<sup>nd</sup> respondent in his affidavit at paragraph 2 stated that it's a mere waste of court's time and should be rejected.

Coupled with the arguments by both counsel the intentions of this amendment seem to be to reduce the value to that which conforms to the land in contention. In the case of **NGAMITA PAROZA & 2 ORS VRS. BANK OF UGANDA MISC. CIVIL APP. NO. 695 OF 2002** Hon. **J. Musoke Kibuuka** guided that the aim of pleadings is to enable court to effectively and completely adjudicate upon and determine all the questions involved in the suit before it.

Also in the case of **Matagala Vicent versus URA Misc. App. 25 of 2013**, the principles governing amendments of pleadings as stated by courts were extensively reviewed. These include for our purposes the holding that;

*“An amendment would be necessary within the meaning of O.6 rule 19 of the CPR if it is for the purpose of determining the real questions in controversy between the parties.”*

See also **Gasu Transport Services (Bus) Ltd v. Martin Adala Obere SCCA No. 14/1994.**

In this case, the reasons propounded by the applicant, are for placing the claim within its pecuniary context, and to help court determine other relevant matters connected thereto. This goes to the matters in controversy and in my view is a valid ground to move court to grant the amendment. On that premise therefore I

find that O.6 r.19, empowers this court to allow applicant amend his plaint as prayed.

**Issue 2: Whether the head suit should be transferred to the Chief Magistrate's Court at Tororo.**

I have reviewed already the grounds upon which the applicant seeks this order. I have also reviewed the matters raised in opposition. I will now discuss the law and apply it to the facts as here below.

The principles for transfer of suits from one court to another have been laid down in various cases.

According to the case of *David Kabungu v. Zikabenga & 4 Ors Misc. App. 36/95*,

*“A suit which is filed in a court that has no jurisdiction cannot be transferred from that court.”*

A similar holding is found in *KAGENYI VS. MISIRAMO & OTHER HC. MISC. 39/67*, held that;

*“An order for transfer of a suit from one court to another cannot be made unless the suit has been in the first instance brought to a court which has jurisdiction to try it.”*

The High Court (this court) has inherent jurisdiction which is unlimited under section 14 of the Judicature Act. The matters which the plaintiff seeks to be determined, specifically under his own plaint involve the cancellation of Title, which is a matter specifically provided for by the RTA- granting the power to the High Court. I do not understand what the plaintiff is trying to achieve by seeking this transfer, because this court has jurisdiction to try this matter.

The case of **KAGENYI** further provides that;

*“It is a well established principle of law that the onus is upon the party applying for the case to be transferred from one court to another to make out a strong case to the satisfaction of the court that the application ought to be granted.....the principle matters to be taken into account are balance of convenience, questions of expense, interest of justice and possibilities of undue hardship. where the court is left in doubt, whether its proper to order the transfer, the application must be refused.”*

Applying the above case to the facts before me, the applicant in paragraph 10 says it is better to be tried in Tororo because the suit land is situated there, that Mbale road is under construction, that all his witnesses are in Tororo, that the High Court is clogged with cases, yet lacks manpower. Respondent’s counsel opposed this assertion and insisted the matters be left in High Court for trial.

The cases above show that the starting point is jurisdiction. The court transferring and the one to which a transfer is made must have jurisdiction to try the matter. The matter which counsel seeks to amend by altering the value of the suit land is above the Chief Magistrate, and by operation of RTA, falls in the High Court. By moving to amend, it appears counsel wants to reduce the pecuniary jurisdiction to follow within the Magistrates courts, then using an application for leave to amend, obtain leave to transfer the amended case to the Chief Magistrate’s Court.

In my view this is wrong and offends the rules. He is before this court under O.6 r.19 to amend a plaint in a subsisting case in the High Court. This case cannot be transferred to the Chief Magistrate, even after amendment because that will require a separate application with supporting authorities to show that it is possible.

Court however could in the interest of justice invoke its inherent power and order a transfer. Upon amendment on grounds as discussed in **KAGENYI** case above. I do not however find any sufficient ground to warrant this transfer. For the reasons stated above this issue fails.

**Issue 3: Whether the head suit is time barred.**

The last issue arises out of the defence submission, and was brought as a preliminary objection. Counsel raised it as his ground No.4 for opposing the application. He argued that the action which is being put before this court is caught up by the Limitation Act.

Without going into the arguments, I find that this objection is misplaced. It was not pleaded in the affidavits in reply to this application. It's prudent not to make a finding on it because doing so would entail going into the merits of the main suit. The applicant was addressing court on the preliminary point of seeking leave to amend pleadings. It's my considered opinion that determination on this issue should await the hearing of the head suit.

In the result therefore this application will succeed in part in that the applicant will be given leave to amend his plaint as prayed. He should do so within 14 days from today and proceed to schedule. The application to transfer the head suit to the



lower Chief Magistrate's Court is refused for reasons already stated. The costs of this application will be granted to defendants.

I so order.

**Henry I. Kawesa**

**JUDGE**

**17.09.2013**