

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT JINJA**

MISC. APPLICATION NO. 407 OF 2014
(Arising from Civil Suit No. 141 of 2014)

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**ISIKO ERIFAZI & 13 OTHERS :::::::::::::::::::::
APPLICANTS**

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VERSUS

**HAJI JUMA KIRYA :::::::::::::::::::::
RESPONDENT**

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BEFORE: THE HON. JUSTICE GODFREY NAMUNDI

RULING

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This Application is brought under Section 6 CPA and Order 52
rr. 1, 2 and 3 CPR.

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It seeks orders that proceedings in Jinja High Court Civil Suit
No. 141/2014 be stayed and costs be provided for.

The grounds are listed as follows:

- (1) The Applicants are Defendants in Civil Suit No. 54/2013
before the Chief Magistrate's Court at Iganga.

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(2) The said suit has proceeded and is now at defence stage.

(3) The suit before the Chief Magistrate's Court relates to ownership of a piece of customary land with the same issues as the suit before the High Court.

(4) The suit at the Chief Magistrate's Court was previously instituted and is between the same parties or parties under whom they claim.

(5) The reliefs being sought in the High Court are the same as those in issue in Civil suit No. 54/2013 in the Chief Magistrate's Court which has jurisdiction to grant the reliefs sought.

(6) By operation of law, the High Court has no powers to proceed with the hearing in Civil Suit No. 141/2014.

The affidavit in support is deponed by the Applicant and in effect reiterates the grounds narrated in the Application.

It in effect claims the Respondents wrongly filed suit No. 141/2014 when there is an ongoing suit No. 54/2013 over the same subject matter, the same issues and was filed much earlier than the instant suit.

The Respondent filed an affidavit in reply.

Therein he avers that he filed Civil Suit 54/2013 in the Chief Magistrate's Court seeking declarations of ownership of over 22 acres of land valued at Shs.22,000,000/= which was within
5 the jurisdiction of the Chief Magistrate's Court.

Sometime in 2014, the Applicant and 19 other people encroached on the remaining 278 acres of land and he was forced to file Civil Suit No. 141/2014 before the High Court
10 because the value of the suit property was far beyond the jurisdiction of the Magistrate's Court.

That the High Court may on application or on its own motion withdraw any suit or proceeding in any subordinate Court and
15 try such case.

That there is an application for withdraw of the suit but the said application is not fixed for hearing.

20 The Applicant also avers that the matters in issue in High Court suit No. 141/2014 and Chief Magistrate's Civil Suit No. 54/2013 are directly and substantially the same as contended only that the matter in the Chief Magistrate's Court is beyond the jurisdiction of that Court. That the proceedings before the
25 Magistrate's Court should therefore be withdrawn and instead the matter be tried by the High Court.

A perusal of the pleadings reveals that there is convergence on the question that the issues in both the case in the Magistrate's Court and the one in the High Court are directly
5 and substantially the same.

However, while the Applicant insists that the Magistrate's Court has jurisdiction in the matter, the Respondent claims the case can only be tried by the High Court due to the value of
10 the subject matter.

The Applicant relies on the provisions of **Section 6 CPA**, that the earlier suit should proceed and the subsequent one stayed. That the matters before both Courts are based on **trespass**.
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The Applicants cite **Section 207 (1) (a) MCA** which gives unlimited jurisdiction to the **Chief Magistrate** in cases of **damage to property, conversion and trespass**. Section 207 (2) MCA also provides for unlimited jurisdiction where the
20 cause or matter of a civil nature is governed only by civil Customary Law where the matter is before a **Chief Magistrate**.

For the Respondent, it is submitted that this matter is not
25 limited to trespass. It also seeks a declaration that the Plaintiff is the lawful owner of the suit land. The case of **Paskari**

Kizito Vrs. Kasifa Ndagire & another (2006) KALR 207,
was cited.

He also cited Revision Cause No. 115/2011 in which it was
5 declared that once Mesne profits were claimed, then the
matter ceased being governed by Customary Law.

The Respondent insists that the land in question is 300 acres
and that the value is therefore beyond the jurisdiction of the
10 Chief Magistrate. He submits that because of the above
issues, he filed Application No. 368/2014 under Section 18 (b)
(1) CPA which gives powers to this Court to transfer a matter
to itself or to any subordinate Court.

15 I have read the case of **Paskari Kizito (supra)**. I find that
the matter is distinguishable from the instant suit. That
matter was about rights over a property governed by the
provisions of law on Custodian Board controlled property. It
was not based in trespass.

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Similarly, Revision Cause No. 115/2011 was about a matter
before a Magistrate Grade 1. Sections 207 (1) (a) and (2) of
the MCA specifically provide for the jurisdiction. The
authorities cited were relevant therefore in the context and
25 circumstances of the cases they were applied.

The instant suits are both founded on trespass and there are no claims for mesne profits.

5 The only convergence is the holding in the case of **Paskari (supra)**, that jurisdiction is a creation of statute. It cannot be assumed or compromised by the parties to the dispute.

10 It follows therefore that under Section 207 (1) (a) MCA, a Chief Magistrate has unlimited jurisdiction in matters based on damage to **property, trespass and or conversion**. I find that suit No. 141/2014 can be competently tried by the Chief Magistrate.

15 In the instant case before the High Court, the Respondents sought to bring their dispute to the High Court by filing the same matter (but with more parties) in the High Court. it is my finding that in that context, Section 6 CPA is applicable as the matter before the Chief Magistrate was filed prior to the one before this Court.

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There is no dispute that the High Court is empowered to transfer a case before itself or to a subordinate Court under the provisions of **Section 18 CPA**.

This of course stems from the Judicature Act that provides for unlimited jurisdiction by the High Court in all matters, that may be conferred on it by any Law. (Section 14 Cap. 13 refers).

5 I however find it unusual for a party to jump from the Magistrate's Court to the High Court under the guise of filing another suit citing higher jurisdiction, so as to remove that matter before the lower Court.

10 The proper procedure should have been followed if there were issues of jurisdiction in the case before the lower Court. The Respondents should have sought to amend the Plaint in the Chief Magistrate's Court. if it transpired that the matter was beyond the jurisdiction of that Court, then the provisions of
15 Section 18 CPA would have been invoked and that matter would have been transferred to the High Court.

I find therefore that having Civil Suit No. 141/2014 in the High Court offends Section 6 CPA as Civil Suit No. 54/2013 before
20 the Chief Magistrate's Court was filed earlier, and is substantially and directly over the same dispute and issues.

This Application accordingly succeeds. Civil Suit No. 141/2014 cannot proceed during the pendency of Civil Suit No. 54/2013.
25 It is stayed accordingly.

It is up to the Respondents to follow any of the options I have alluded to earlier. It follows that they may have to withdraw Suit No. 141/2014, amend pleadings in Civil Suit No. 54/2013 and proceed accordingly.

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The Respondents will meet the costs of these proceedings.

I also direct that should any party wish to appeal against this Ruling, leave is granted within the provisions of Section 76 CPA
10 and Order 44 (2) CPR.

Godfrey Namundi

Judge

15 **16/12/2014**

16/12/2014:

Galisonga Julius for Applicants

5 Benard Mugenyi for Respondent

Both parties in Court

Court: Ruling delivered in Court.

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Godfrey Namundi

Judge

16/12/2014

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