

UGANDA / JUDGMENT

Kadra v Otule and Others

(Miscellaneous Application 178 of 2020)

[2022] UGHCCD 309 (17 August 2022)

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COURT

HC: Civil Division (Uganda)

BEFORE

Adonyo, J

CASE / FILE NUMBER

Miscellaneous Application 178 of 2020

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The Republic of Uganda

In the High Court of Uganda

Holden at Soroti

Miscellaneous Application No. 0178 of 2020

(Arising from Soroti Chief Magistrate's Court Civil Suit No. 34 of 2015)

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Kadra Mohammed Ismail Turige ::::::::::::::::::::::::::::::

 $\$ V_s \$$

G. Otule & 12 Others ::::::::::::::::::::::::::::::

Before: Hon. Justice Dr Henry Peter Adonyo

Ruling

1. <u>Background:</u>

This is an application brought by notice of motion under sections 218 of the Magistrates Court Act, section 98 of the Civil Procedure Act and Order 52 rules 1,2 & 3 of the Civil Procedure Rules for orders that: -

i. Civil Suit No. 034 of 2015 before the Chief Magistrates Court Soroti be transferred to this Honourable Court for trial.

ii. Costs of this application be provided for.

2. Grounds and affidavits relating to this Application:

The grounds of the application as contained in the application and supporting affidavit are;

- i. The applicant filed Civil Suit No. 034 of 2015 before the Chief Magistrates Court of Soroti for recovery of his land measuring approximately 32 plots in the year 2015.
- That at the time of filing the suit each plot was valued at about ii. Ugx. 1,000,000/ \$= \$ within the pecuniary jurisdiction of the Chief Magistrate's Court.
- The said land is located at cells "B2" and "B3" camp Swahili ward, iii. Northern Division, Soroti City (Previously Municipal Council).
- That the suit land has since been steadily appreciating in value. iv.
- Further, Soroti Municipality has been elevated to city status v. which has seen the value of a plot rising to Ugx. \$30,000,000/\$ = at current.
- The aggregate value of the Applicant's 32 plots is at current vi. market value estimated to be Ugx. 960,000,000/ \$= \$.
- That the value of Ugx. \$960,000,000/\$ = is way beyond the vii. pecuniary jurisdiction of the Chief Magistrates Court with the result that it can only be competently tried in this Honourable Court.

That it is fair, just and equitable that this application be allowed. viii.

The affidavits in reply filed by the \$7\$ th respondent and the \$4\$ th respondent with authority from the \$1^{st}\$ \$, \$2^{nd}\$ \$ and \$6^{th}\$ \$ respondent state thus; 25

- i. That the applicant filed Civil Suit No. 034 of 2015 in a court which lacked jurisdiction and on 12th November 2020 a preliminary objection was raised to this effect.
- That the applicant's advocate was given up to 14th December ii. 2020 to reply to the preliminary objection but he did not enter appearance.

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- That they were surprised to learn that the applicant on \$2^{nd}\$ iii. December 2020 filed this application to defeat the purpose of the objection raised in the Chief Magistrates Court.
- That the application is an abuse of court process. iv.

- That although this court has unlimited jurisdiction it has no \$V.\$ powers to transfer a case filed in a wrong lower court devoid of jurisdiction.
- That the applicant ought to have withdrawn the case from the vi. Chief Magistrate Court and filed a fresh suit in this Honourable court.

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3. <u>Submissions:</u>

Counsel for the applicant submitted that under section 18(1)(b)(i)\$ of the Civil Procedure Act and section 218 of the Magistrates Court Act the High Court has power to transfer cases. He submitted that in *Kagenyi* \$v\$ *Musiramo and Anor [1968] 1 EA 43* it was held that

"It is a well-established principle of law that the onus is upon the party applying for a case to be transferred from one court to another for due trial to make out a strong case to the satisfaction of the court that the application ought to be granted. There are also authorities for stating that the principal matters to be taken into consideration are balance of convenience, questions of expense, interests of justice and possibilities of undue hardship; and if the court is left in doubt as to whether under all the circumstances it is proper to order a transfer, the application must be refused: see: *Matayo K. Kaboha v. Abibu Bin Abdulla and Others ((1936–51), 6 U. L. R. 121).*"*

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Counsel further relied on *Nalyanya Fredrick Wepukhulu Vs* \$\mathsf{S}\$ Kundu Francis and 5 Ors HCMA No. 36 of 2018 where Susan Okalany, J held that the trial court ought to have advised the parties to apply to the High Court for withdrawal of the case when it was being heard when it was ascertained that the suit had gone beyond the jurisdiction. She further held that the Trial Magistrate ought to have halted 10 proceedings and the suit be transferred to the High Court instead of dismissing the suit.

Counsel submitted that by the time the applicant filed the Civil Sit the Chief Magistrate Court had jurisdiction to try it.

Counsel for the \$1^{\text{st}}\$, \$2^{\text{nd}}\$, \$4^{\text{th}}\$ and \$6^{\text{th}}\$ respondents in reply submitted that the 15 purpose of this application is to defeat the point of law raised in Soroti Chief Magistrates' Court which is pending a ruling.

Counsel submitted that section 18 (1) (b) of the Civil Procedure Act does not prescribe any grounds on which the transfer of a case may be ordered

from one court to another but the more common reason is the existence 20 of a reasonable apprehension in the mind of a party that it will not get justice at the hands of the presiding judicial officer. *(See: *Okello John) Felix Vs. Oloya Samuel & Anor Misc. Appln. No. 0159 of 2018*)*

Counsel further submitted that judicial independence of every Court in passing orders in cases filed before it is well settled by **Article 128 of *The Constitution of the Republic of Uganda, 1995** and Principle 1 of The Uganda Code of Judicial Conduct, 2003.*

This independence cannot be interfered with by any Court, including a superior Court.

However, by express statutory provisions, the High Court's authority over $\mathbb{S}$ proceedings pending in Magistrates court is either of a prerogative or a supervisory nature.

Both powers are prescribed by law and therefore a party seeking the High Court's intervention in proceedings that are ongoing in a Magistrate's Court, is expected to invoke either power, and not otherwise.

(See: Simba Properties Investment Co. Ltd & 5 Ors Vs. Vantage Mezzanine Fund II Partnership & 6 Ors Misc. Appln. No. 0414 of \$2022\$)

Counsel further stated that the power of the High Court to control the course of litigation in the inferior courts and tribunals is a power which must be exercised with caution since its abuse would nullify the ordinary appellate procedure. In this context, the applicant has not sought the court's powers to transfer Civil Suit No. 034 of 2015 through exercise of either a prerogative or a supervisory jurisdiction. Further, the pecuniary sums attached to the application are not pleaded in either the plaint or its 20 subsequent amendments.

That the issue of pecuniary jurisdiction is being smuggled into the pleadings through this application, which illegality the applicant prays that this Honourable Court, which is a pillar of justice and a court of record, be pleased to sanction.

The applicant has an alternative course available to her which includes; withdrawing Civil Suit No. 034 of 2015 and filing a fresh suit in this Honourable Court.

It is therefore just and equitable that this application be dismissed.

Counsel finally submitted that this Honorable Court be pleased to dismiss this application with costs to the respondents.

Counsel for the ⁷ respondent submitted that whereas the High court has $\mathbb{S}$ wide discretion to withdraw and transfer cases from a subordinate court to itself for trial under section 18, this section can only be invoked under justifiable circumstance which may include cited bias on a trial court by one party. However, the High court can only exercise that power where the suit sought to be transferred was initially filed in a court with jurisdiction. In the case of **Pratinidhi Sabha East Africa Versus* Mukesh Jain*, the court cited the case of *Kagenyi Vs Musiramo & Anor [1968] EA 43* where it was held that;

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"An order for the 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"

Counsel submitted that the true position of the matter is that the suit land has from the onset been beyond the pecuniary jurisdiction of the Chief Magistrates Court and the Applicants contention that at the time she filed the suit in 2015 before the Chief Magistrates Court, the subject matter fell within the jurisdiction of the Chief Magistrate cannot stand.

Counsel argued that the suit land is located in camp Swahili Ward in Soroti City and measures 32 plots which is about 2.4 km from the Centre

of Soroti City town and is along Soroti-Moroto High Way and it is \$25\$ inconceivable that a plot of land located just 2.4 Km from the centre of Soroti town was valued at only UGX \$1,000,000/\$ = by 2015 when the suit was filed. And now the Applicant wants this honorable court to believe that within a period of 5 years, the value of each plot has arisen by UGX \$29,000,000/= \$. 30

Counsel prayed that in the premises, court exercises its own assessment under Section 113 of the Evidence Act Cap 6 to assess and presume

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what the Value of each plot of the suit land could have been in 2015 in \$S\$ order to determine if indeed the chief Magistrates court had the jurisdiction to entertain the matter in 2015.

Counsel further submitted that what the Applicant should have done was to withdraw Civil Suit No. 34/2015 from the lower court and file a fresh suit in the High Court but not to seek a transfer of a suit from a court which did not have jurisdiction in the first place.

4. <u>Court's findings:</u>

I agree with the submissions of counsel that the High Court can only exercise its powers of transfer under Section 18 [1] Civil Procedure Act with respect to matters that were properly and legally filed in the correct Court clothed with jurisdiction in the first place.

This is a well-established principle in this jurisdiction.

See: Musisi v Namakula & Anor (M/A NO. 303 of 2016) [2016] UGHCCD 141 (20 October 2016), Kagenyi v Musiramo and Anor [1968] 1 EA 43 and Osuna v Ofwono (HCT-04-CV-MA-77-20 2012) [2013] UGHCCD 113; amongst others.)

I find that the applicant's claim that the Chief Magistrate had the jurisdiction to hear the matter at the time it was filed unsustainable.

Hon. Justice Dr Henry Peter Adonyo

Judge

\$17^{\rm th}\$~August~2022\$

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