

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT JINJA
MISCELLANEOUS APPLICATION No. 95 OF 2018

BUUTO ALI===== APPLICANT

VERSUS

WAISWA RICHARD NICKSON===== RESPONDENT

BEFORE HON. JUSTICE MICHAEL ELUBU

RULING

This is an application brought by **BUUTO ALI** (the applicant) against **WAISWA RICHARD NICKSON** (the respondent).

The orders sought are for the transfer to the High Court of Civil Suit No. 20/2017 which is in The Chief Magistrate's Court of Iganga and is currently before the Grade I Magistrate for hearing. The Applicant also prays for consequential orders and costs.

The basis of the Application is found in the grounds listed in the Notice of Motion and its accompanying affidavit where it is stated that the subject matter of the suit before the lower court has been valued by the Chief Government Valuer at 240,000,000/= (two hundred and forty million shillings).

The Applicant also states that he intends to seek damages of 120,000,000/= (One hundred and Twenty Million shillings).

For these reasons he states the suit is beyond the pecuniary jurisdiction of the trial magistrate and should be transferred to this Honourable court.

The Respondent opposed this application. He stated in his affidavit in reply that the suit before the lower court is for trespass to land. That in the course of hearing, the applicant introduced a land title in evidence. As a consequence the respondent filed civil suit No. 48/2008 in the High Court in Jinja seeking cancellation of that title. That as the suit in Iganga revolves around trespass the trial magistrate should handle it to completion and this application for transfer should be rejected.

Mr. James Okuku appeared for the applicant while Mr. Seryazi Benon appeared for the Respondent.

The background to this matter is that the respondent filed Civil Suit No.20/2017 in the Chief Magistrate in Iganga, which is now before the Grade I Magistrate, who has heard some evidence.

The subject matter is land situate in Nabidhonga LC.I in Iganga Municipality, Iganga District. It is the Plaintiffs prayer that the defendant be declared a trespasser; that eviction issue; that a demolition be ordered; the Plaintiff also seeks a permanent injunction against the defendant (the applicant here), damages and costs.

It is true the respondent filed a suit in the High Court Jinja where apart from the prayer for the cancellation of the applicants land title the rest of his eight prayers are virtually the same as those made before the Magistrate's Court.

This court has seen the valuation report made by The Government Valuer dated the 15th March 2018. The Value attached to the suit property is 240,000,000/= (Two hundred and Forty Million shillings).

Sections 11 of **The Civil Procedure Act** and 207 of **The Magistrate's Court Act** give the jurisdiction of Civil Courts. These provisions fix the pecuniary jurisdiction of a Magistrate Grade I at Twenty Million Shillings 20,000,000/= (see 207(1) (b) of **The MCA**).

It is also the law that a judgment of a court without jurisdiction is a nullity and as such is something which a party affected by it was entitled to have set aside (see **Mubiru V. Kayiwa (1979) HCB 212**).

As a consequence the proceedings a court sitting without jurisdiction would themselves be illegal.

Section 18 of **The Civil Procedure Act** stipulates that the High Court may on the application of any party withdraw a suit pending before a subordinate court and transfer it to itself for determination.

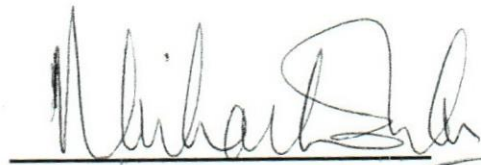
Such order of transfer is subject to the legality of the suit for which transfer is sought. Where the original suit was instituted in a court without jurisdiction, then such a suit is incompetent and cannot be transferred (see **Kagenyi V Musiramo & Anor (1968) 1 EA 43**).

In this instant case, evidence was adduced in the course of hearing that the subject matter was worth 240,000,000/=: which falls outside the pecuniary jurisdiction of a Magistrate Grade I. For this reason the proceedings before that court are incompetent, null and void. This court cannot transfer a suit which is illegally before a subordinate court.

Therefore the only option open to this court is to declare Civil Suit No. 20/2017 before the Chief Magistrate in Iganga as illegal null and void. That suit is accordingly struck out.

Since the parties already have a subsisting suit before the High Court they shall proceed with the same.

The question of the value of subject matter does not appear to have been addressed by parties before the applicant raised it. Nor did the court them on it. For that reason this court shall not award costs for striking out that suit.

A handwritten signature in black ink, appearing to read 'Michael Elubu', written over a horizontal line.

MICHAEL ELUBU

JUDGE

20/6/2018