

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA

HOLDEN AT JINJA

H.C. MISC. APPL. NO. 23 OF 1993

H.C.C.S. NO. 21 OF 1993

SINO (U) FISHERIES JOINT: APPELLANT/PLAINTIFF
VENTURE CO. LTD.

- VS -

UGANDA FISHERIES ENTERPRISES LTD.: RESPONDENT/DEFENDANT

BEFORE: THE HON. MR. JUSTICE C.M. KATO

J U D G M E N T

This is an ex-parte appeal against the order of District Registrar of Jinja who is said to have declined to enter an ex-parte judgment under Order 9 rule 4 of Civil Procedure Rules. The appeal has been made under the provisions of Order 46 rules 6 and 8 of Civil Procedure Rules and it is by notice of motion dated 18/10/93. It is supported by the affidavit of the appellant's counsel Mr. Nsibambi dated 18/10/93. Since the whole matter is ex-parte there was no affidavit in reply.

By this appeal the appellant is seeking 2 Orders from this court; the first is to set aside the order of the District Registrar declining to deal with appellant's application to enter judgment in favour of the appellant/plaintiff, the second order sought for is for this court to order the District Registrar to enter judgment in favour of the plaintiff/appellant.

Mr. Nsibambi who appeared for the appellant argued that the learned District Registrar should have entered the judgment under Order 46 rule 2 of Civil Procedure Rules since the matter was uncontested and that the District Registrar's refusal to entertain the matter for lack of pecuniary jurisdiction was improper.

This argument would have found my favour if only this appeal was competent; because when the chief magistrate is handling matters in his/her capacity as a District Registrar under Order 46 of Civil Procedure Rules his/her jurisdiction does not remain the same as that of the chief magistrate.

Be that as it may, this appeal is totally incompetent as there is no order being appealed against. The learned District Registrar did not make any formal order refusing to grant the request made to her. What appears on my file is a memo dated 7/10/93 forwarding the file to me for disposal (see annexure "C" to the appeal). On the original file there is a loose memo addressed to nobody stating that the counsel should be advised that the money involved was beyond the jurisdiction of "this court" (meaning District Registrar's court). I do not know if it is that memo, which was possibly for administrative purpose, against which this appeal has been lodged. Legal matters must be dealt with in some accepted form. In my opinion the above note is not an order as defined under section 2 of Civil Procedure Act and it has no legal bearing, I even do not know why the learned counsel decided to act on it when it was never addressed to him. This kind of situation would have been avoided if only the learned counsel had put his request to the District Registrar in form of a notice of motion under Order 48 rule 1 of Civil Procedure Rules in which case the District Registrar would have had to dispose of that application, instead of the learned counsel indulging in correspondence which appears to have not been acted upon properly.

There being no order appealed against within the meaning of section 2 of Civil Procedure Act this appeal is incompetent and it is hereby struck out with no order as to costs. The appellant is at liberty to pursue his original claim in any way that is permitted by law since this appeal has no bearing on the main suit but it is limited to the alleged order by District Registrar, an order which does not exist in law.

C.M. KATO
J U D G E
 2/11/93

2/11/93 Both parties absent.
 Nsibambi for plaintiff
 Kiige court clerk.
 Court: Judgment is delivered.

C.M. KATO
J U D G E
 2/11/93