

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MASINDI
CIVIL SUIT NO. 0072 OF 2021

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NAKAWESI RAHMA PLAINTIFF

VERSUS

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PRIDE MICROFINANCE LTD (MDI) DEFENDANT

BEFORE: Hon Justice Isah Serunkuma

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RULING

The plaintiff's claim in this suit is for recovery of Ush. 5,164,533 (1030/= Jordanians) which was allegedly negligently paid out to a wrong beneficiary by the defendant's agents at its branch in Kabalagala. The plaintiff claims that the defendant breached its duty of care when it paid out the said sum which was sent to the plaintiff by Asia Ahmad Khalli Shahrouri for purposes of construction of shallow wells in Hoima District at Mparo and Hoima Regional Referral Hospital mosques. The plaintiff prayed for an order of recovery of the entire sum, general damages, exemplary damages and costs of the suit.

In reply, the defendant denied the plaintiff's claim and averred that a customer who identified herself as the plaintiff went to its Kabalagala branch and sought to access the defendant's MoneyGram services on 2nd March 2020. She filled in a receipt form, presented a driving permit and a reference number whereupon the money was given to her. The defendant avers that it paid out the Ush. 5,164,533 having followed its MoneyGram policies and exercised due diligence in verifying the credentials

presented. In the premises, the defendant denied the claim of negligence and invited this court to dismiss the plaintiff's suit with costs.

Representation

5 The Plaintiff was represented by counsel Kasangaki Simon of M/s Kasangaki & Co. Advocates while the Defendant was represented by counsel Nabaka Jacinta from Pride Micro Finance Limited (MDI) Legal Department.

10 When the matter came up for summons for directions, learned counsel for the defendant raised a preliminary objection challenging the territorial and pecuniary jurisdiction of the court to handle the suit. The parties filed submissions on the preliminary points of law which I have duly considered.

Analysis

15 By way of a preliminary objection, learned counsel for the defendant contended that since the transaction giving rise to the plaintiff's claim took place at the defendant's branch in Kabalagala, within Kampala District, the suit ought to be tried in Kampala, rather than Masindi District. Counsel relied on section 15 of the Civil Procedure Act which provides that every suit shall be instituted in a court within the local limits of
20 whose jurisdiction the cause of action arose wholly or in part.

Secondly, counsel submitted that since the value of the subject matter of this suit is Ush. 5,164,533, the matter ought to have been filed in a Magistrates Grade 1 Court in line with the jurisdiction vested in Magistrates Courts under section 207 of the
25 Magistrates Courts Act, Cap. 16. For this proposition, counsel relied on the case of

Agnes Katushabe v Housing Finance Bank & anor, Miscellaneous Application No. 134 of 2015 where it was held that the original jurisdiction of the High Court must be exercised in conformity with the written law.

In reply to the defendant's preliminary objection, learned counsel for the plaintiff submitted that under section 15 of the Civil Procedure Act, a suit may be instituted in the place where the defendant ordinarily resides or carries on business. Counsel further submitted that this court has unlimited original jurisdiction in all matters vested under Article 139 of the Constitution and section 14(1) of the Judicature Act, Cap. 13.

It is trite law that this Court has unlimited jurisdiction in all matters as prescribed under Article 139 of the Constitution and section 14 of the Judicature Act. However, such unlimited jurisdiction must be exercised in conformity with written laws and procedure. To this effect, the Supreme Court held in the case of *Uganda Revenue Authority v Rabbo Enterprises (U) Ltd & Anor (Supreme Court Civil Appeal No. 12 of 2004) [2017] UGSC 20* that the High Court exercises its unlimited jurisdiction subject to other provisions of the Constitution. Similarly, in *Paunocks Enterprises Ltd & Ors Vs Stanbic Bank (U) Ltd H.C.M.A No. 1113 of 2014* this Court held that the original unlimited jurisdiction of the High Court must be exercised in conformity with the written law and where there is none, in conformity with common law, doctrines of equity or established custom, as prescribed by section 14(2(a) & (b) of the Judicature Act, Cap. 13. (See also; *Agnes Katushabe Vs Housing Finance Bank Ltd & Anor Misc. Appl. No. 134 of 2015, and; Joseph Otubeny v Housing Finance Bank & Anor (MISC. APPLICATION NO.462 OF 2015) [2016] UGHCLD 70*). One such written law is section 207 of the Magistrate Courts Act which, for procedural purposes, prescribes the pecuniary jurisdiction of Magistrates Courts in the following terms;

“207. Civil jurisdiction of magistrates.

(1) Subject to this section and any other written law, the jurisdiction of magistrates presiding over magistrates’ courts for the trial and determination of causes and matters of a civil nature shall be as follows—

*(a) a chief magistrate shall have jurisdiction where the value of the subject matter in dispute does not exceed **five million** shillings and shall have unlimited jurisdiction in disputes relating to conversion, damage to property or trespass;*

*(b) a magistrate grade I shall have jurisdiction where the value of the subject matter does not exceed **two million** shillings;*

*(c) a magistrate grade II shall have jurisdiction where the value of the subject matter in dispute does not exceed **fifty thousand shillings.**”*

The above thresholds were amended by section 11 of the Magistrates Courts (Amendment) Act, 2007, to fifty million for a Chief Magistrates Courts, twenty million for a Grade I Magistrates Court and five hundred thousand shillings for a Grade II Magistrates Court. In the present matter, the plaintiff’s claim is Ush. 5,164,533 which falls well within the pecuniary jurisdiction of a Grade 1 Magistrates Court. Learned counsel for the plaintiff submitted that the plaintiff claims for general damages of 100 million and punitive damages of 50 million which cannot be granted by the Chief Magistrate’s Court. I have perused the plaint on the Court’s record and found no such claims. Counsel’s submission is therefore respectfully rejected.

With regard to the preliminary point of law touching the territorial jurisdiction of this Court, section 15 of the Civil Procedure Act provides for the institution of suits at the

place where the defendant resides or where the cause of action arose. (See; *Sebaggala & Sons Electric Centre versus Kenya National Shipping Lines UCL [1997-2001] 388*).

5 It is immaterial that the plaintiff resides in Hoima and that she was meant to withdraw the money at the defendant's branch in Hoima. This is because section 15 of the Civil Procedure Act prescribes in terms of the defendant's residence and not the plaintiff's residence.

10 In the present case, the cause of action arose at the defendant's branch at Kabalagala in Kampala District. Learned counsel for the plaintiff submitted that this suit concerned a contract and proposed that the cause of action is deemed to have arisen where the contract was made or where the contract was to be performed or payment was to be made. This submission cannot be sustained because according to paragraph 3 of the
15 plaint, and from perusal of the entire plaint, the plaintiff's cause of action is negligence on the part of the defendant who allegedly in breach of duty of care, illegally paid out Ush. 5,164,533 to a wrong beneficiary. Thus, from her own pleadings, the plaintiff's cause of action is not breach of contract but negligence, which undisputedly occurred at the defendant's branch in Kabalagala.

20 Furthermore, my understanding of Explanation No. 2 given under section 15 of the Civil Procedure Act, with regard to a corporation, is that a suit may only be filed at a corporation's subordinate office, in this case the defendant's branch at Hoima, if the cause of action arose at that subordinate office. I will reproduce the explanation for emphasis;

“Explanation 2. — A corporation shall be deemed to carry on business at its sole or principal office in Uganda or, in respect of any cause of action arising at any place where it has also a subordinate office, at that place.”

5 I have already found, as a matter of fact, that the plaintiff’s cause of action being negligence, arose at the defendant’s branch in Kabalagala. Therefore, the plaintiff cannot rely on the explanation given under section 15 of the Civil Procedure Act.

In the final result, court finds merit in the preliminary points of law raised by learned
10 counsel for the defendant and the same are upheld in line with the practice of courts and established procedure that suits which fall within the pecuniary and territorial jurisdiction which is clearly prescribed by written law should be instituted in those courts. Accordingly, in exercise of this Court’s power under section 18 of the Civil
15 Procedure Act, it is ordered that the matter be transferred to a Magistrates Court competent to try or dispose of it in accordance with section 207 of the Magistrates Courts Act as amended and the Magistrates Courts (Magisterial Areas) Instrument, 2017.

I so order.

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Dated and delivered on this 31st day of August 2023.



Isah Serunkuma

25 JUDGE