

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT JINJA
CIVIL APPEAL No. 115 OF 2016
(Arising From Bugiri Civil Suit No. 11 of 2014)

SBI INTERNATIONAL HOLDINGS
AG (UGANDA) LIMITED ===== APPELLANT

VERSUS

KISAMBIRA ROBERT & 168 OTHERS
(Suing Through Mgugu Abbey
by Powers of Attorney) ===== RESPONDENT

BEFORE: HON. MR. JUSTICE MICHAEL ELUBU

JUDGEMENT

This is an appeal from the Judgment of His Worship Komakech Kenneth, Magistrate Grade I, sitting at the Chief Magistrate's Court of Iganga in Bugiri. That Judgment was delivered on the 19/6/2016. The Appellant is **SBI International Holdings Ag (Uganda) Limited** while the Respondents through a representative action are 168 persons suing through Mgugu Abbey.

The respondents have also filed a cross appeal against the appellants.

The background to this appeal is that the plaintiffs who are the respondents in this appeal filed a suit against the appellants in the Bugiri Magistrates Court. The claim there was for a declaration that the acts of the defendants amounted to the tort of nuisance. They prayed for general and special damages; a prayer

was also made for punitive and exemplary damages. It is alleged that the plaintiffs were all from Bugunga village in Bugiri district where the defendants had, in 2010, set up a quarry at Rwakino hill; that from the time the quarry was built, its activities interfered with their utilisation of their land. That a white dust from the quarry settled over the land, on the crops and the water sources in the village affecting the crops and yields. Plants turned yellow; that the community water source at Namatōke had turned milky as a result of that dust; it is said a black oily discharge was flowing into Namasere swamp affecting it; that there is a smell of rotten eggs, evidence of a poisonous gas – hydrogen sulphate – that emanates from the quarry; that the blasts from the site are affecting some residents who react to the noise and now suffer in the form of posttraumatic stress disorder; that structures including homes, mosques and schools were cracked; that the community has been exposed to flying stones; that the respondent operated from 2010 without a certificate of the environmental impact assessment and they only obtained that certificate in 2014.

The complaint is that the defendant has selectively compensated some people and left out others; that it was only those that had lodged suits in the past that were singled out for compensation (these are two Civil Suits No 45 of 2012 and 36 of 2013). That many persons already compensated lived even farther from the quarry than those in the present suit.

The defendants denied the claim. In their written statement of defence it was stated that the jurisdiction of the court would be challenged in a preliminary objection. Secondly another objection on the plaintiff's lack of capacity to sue in a representative capacity would be raised. It was also said that all the landowners and other persons affected by the quarry were fully compensated in an open and transparent manner; that there was no legal obligation to compensate these plaintiffs who had no common interest against the defendant and were not entitled to any of the reliefs sought.

The evidence adduced on behalf of the defendant company was that in 2010 it had first leased 12 acres of rock in Buwuni, Bugunga Sub County in Bugiri district. Then another 21 acres was also leased in the same year. The quarrying activity started in 2011 which was also the same year that a sister company (Reynolds Construction Company Limited), on behalf of the defendant, applied to National Environmental Management Authority for a licence on impact assessment; the licence was issued in 2013; that a quarry committee was set up at the beginning of operations and that the committee would be informed 48 hours before any blasting of the rock commenced; quarry zones of an area of about 500m radius from the quarry were established and persons within those zones compensated; that in October 2011 when the defendant received complaints of individuals affected by the blasting, it verified and compensated them all; even persons outside the zone but affected were compensated based on verification and assessment of actual damage done; that those payments were made in the presence of the LC I Chairman; another complaint raised through NEMA about the quarry operations led to the Chief Administrative Officer, Bugiri, setting up a committee to investigate and all its recommendations were implemented; that the district environmental officer Bugiri carried out her assessment without the defendants input; that throughout the quarry operations the 168 persons in this suit did not state any claims for compensation. They are a creation of PW 1 Mgugu Martin who is trying to make money from the defendant company; that they were created after the others were compensated.

The learned trial magistrate believed the plaintiffs case and awarded judgment in their favour. He found that the plaintiffs were entitled to the claim as the defendants substantially interfered with their interests in what amounts to the tort of nuisance and they are each entitled to compensatory damages of one million five hundred thousand shillings (1,500,000/-).

The appellants being dissatisfied filed this appeal with 8 grounds. The respondents cross appealed and filed a memorandum that had 5 grounds.

The grounds of appeal, in the respective memoranda, are reproduced here:

1. The learned trial judge erred in law in dismissing the preliminary objection of the appellant ruling that the trial court had the pecuniary jurisdiction to handle the matter.
2. The learned trial magistrate erred in law in holding that the respondent could raise a preliminary objection at the stage of submissions
3. The learned trial magistrate erred in law in holding that the requirements to bring a representative suit against the appellant were complied with
4. The learned trial magistrate erred in law and fact in holding that the appellant's actions amounted to the tort of nuisance.
5. The learned trial magistrate erred in law and fact in holding that the interests of the parties in a representative suit were the same as those of the plaintiffs.
6. The learned trial magistrate erred in law and fact in holding that the respondent was entitled to compensation from the appellant.
7. The learned trial magistrate erred in law and fact in holding that the parties in the representative suit were each entitled to compensation of one million five hundred thousand shillings
8. The learned trial magistrate erred in law during the conduct of the trial by committing several procedural errors in contravention of **the Civil Procedure Rules S.I. 71-3.**

The grounds in the cross appeal are that

- a. That the learned trial magistrate erred in law on legal principle in failing to award general, punitive and exemplary damages as prayed for.
- b. The learned trial magistrate erred in law and fact on the decision of assessing only an award for compensatory damages for a sum of 1,500,000= for each cross appellant

- c. That the learned trial magistrate erred in law and fact in failing to consider the sufficiency of evidence led to prove the award of damages as prayed for.
- d. That the learned trial magistrate erred in law and fact on non-directing himself to the inconveniences caused by the appellants illegal quarry activity while assessing damages
- e. That the learned trial magistrate erred in law and fact by failing to evaluate all the evidence as a whole in regards damages hence occasioning a miscarriage of justice.

At the hearing, the appellant were represented by Mr Raymond Ndyagambaki while Mr Shaban Sanywa appeared for the respondents. The parties filed bulky written submissions which are on record and will not be reproduced here. This Court has closely studied those arguments and will make reference to them in resolving the grounds of appeal.

As this is a first appellate Court the entire body of evidence shall be subjected to a fresh scrutiny to enable the Court arrives at its own conclusions.

Ground 1

The learned trial judge erred in law in dismissing the preliminary objection of the appellant ruling that the trial court had the pecuniary jurisdiction to handle the matter.

The submission of the appellants is that the learned trial magistrate erred in making the award. They argue that an aggregate award of 250,000,000 is well above the pecuniary jurisdiction of a Grade I Magistrate.

The respondent's reply was that, when itemised as the trial court had done, with each plaintiff given 1,500,000/-, the award made by the trial court was not in excess of its pecuniary jurisdiction.

The position of the law is provided by Section 4 of **the Civil Procedure Act** which states nothing shall operate to give any court jurisdiction over suits the amount or value of the subject matter of which exceeds the pecuniary limits, if any, of its ordinary jurisdiction.

In Section 207 of **the Magistrate's Courts Act** the pecuniary jurisdiction of a Grade I Court is limited to 20,000,000/- (twenty million shillings).

Jurisdiction is what determines the competence of a Court of Law. **Osborn's Concise Law Dictionary Sweet and Maxwell 1927** defined Jurisdiction as the power of a court to entertain an action, petition or other proceeding.

Additionally, the party filing a plaint is required by Order VII r 1 (f) to plead facts showing the court has jurisdiction. For example in Para 4 (ix), the plaint filed in this matter, indicates that a demand for compensation for psychological trauma will be in the region of 50,000,000/-.

It is also the legal position that the value to be considered for purposes of determining jurisdiction is the value of that which the plaintiff seeks to recover. See **Jaffers Ltd V Caltex (Africa) Ltd [1961] EA 140** as cited by the High Court in **Mubiru vs Mubiru Revision Cause 4 of 2012** (Land Division).

The figures provided in the plaint [para 4 (ix)] are part of the plaintiff's claim and facts from which the Court could determine pecuniary jurisdiction.

In paragraph 4 of the Written Statement of Defence, the defendant put the plaintiff on notice that it will raise an objection on the ground that the trial magistrate lacked the pecuniary jurisdiction to entertain this suit.

The import of jurisdiction in any trial was considered in the Kenyan Admiralty case of **Roy Shipping SA and others v Dodoma Fishing Co Ltd [1995-1998] 2 EA 294** where it was held that,

"I think it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the Court seized of the matter is then obliged to decide the issue right away on the material before it. Jurisdiction is everything. Without it a court has no power to make one

more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction ...”

Although this was a shipping case the finding on jurisdiction holds generally. All parties in the instant suit were on notice that jurisdiction of the trial court was in issue. The court was therefore enjoined to inquire into and determine the question of jurisdiction which is a matter of law and goes to the very competence of the Court.

In addition as a question of law, jurisdiction may be raised at any stage of the trial. In this case it was raised in the pleadings and ought to have been resolved. The plaint had put the pecuniary value beyond the jurisdiction of a Grade I Magistrate. Secondly even the award made for damages, at 250,000,000/- was above the jurisdiction of the trial magistrate.

The consequences of a court acting without jurisdiction were considered in the case of **Mubiru vs Edmond Kayiwa**[1979] **H.C.B. 212** which held that a decision of a court without jurisdiction is a nullity and as such is something which a person affected by it was entitled to have set aside *ex debito justitiae*.

Taking all the above together the trial court did not have the jurisdiction to try this suit or make an award in the sum it did. It did not matter that it itemised the figures because the total amount exceeded its pecuniary jurisdiction.

Secondly, the fact that the trial court was incompetent renders the entire trial a nullity. The proceedings cannot therefore be saved for use by this court as a first appellate court (which is required by law to subject the entire body of trial evidence to a fresh scrutiny and arrive at its own findings).

Having found as I have, the trial magistrate ought to have inquired into jurisdiction and would have found the subject matter was above its pecuniary limit. At that stage it would have ‘downed its tools’ and taken no farther proceedings in the matter.

In these circumstances, and finding as I have that the trial was a nullity, it would be pointless to canvass the rest of the grounds of appeal.

The appeal therefore succeeds on this ground alone.

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

Michael Elubu

Judge

1.8.19