

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL DIVISION
CIVIL SUIT NO. 358 OF 2021

- 1. JAMES DITAI**
2. SANYU AFRICA RESEARCH INSTITUTE:::PLAINTIFFS
VERSUS
1. PROF. FLORENCE MIREMBE
2. DR. BENON WANUME
3. DR. SAM ONONGE
4. DR. EMMANUEL TUGAINEYO
5. PROF. ANDREW WEEKS:::DEFENDANTS

BEFORE: HON. JUSTICE SSEKAANA MUSA

RULING

The plaintiff filed a suit in this court seeking the following reliefs;

- 1) A declaration that the 1st plaintiff is a founding member and a mandated Executive Director of the 2nd respondent.
- 2) A declaration that the actions of the defendants of purporting to terminate, remove and or replace the 1st plaintiff as a member and Executive Director of the 2nd plaintiff are without authority and contrary to the governing instruments of the 2nd plaintiff.
- 3) A permanent injunction restraining the defendants, their agents, servants, assignees, successors in title and any other persons and entities acting on their behalf and their authority, from purporting to act, without authority, as directors of the 2nd plaintiff and in any other manner interfering with the management and affairs of the 2nd plaintiff.

4) Punitive & Exemplary and General damages and Interest.

The defendants counsel challenged the plaintiffs' suit on ground that there are multiple suits over the same subject matter and further that the said action ought to have been filed in Mbale court.

The plaintiffs were represented by ***Counsel Eddy Nangulu*** and the defendants were represented by ***Counsel Kasaija Robert & Shallon Murungi***.

Counsel for the defendants submitted that Civil Suit No. 3 of 2022; Sanyu Africa Research Institute vs James Ditai, Andrew weeks, Florence Mirembe, Benon Wanume, and Sam Ononge filed by Nangulu & Mugoda Advocates where the dispute was the same as the current suit. That there was also Miscellaneous Cause No. 34 of 2022 between Sanyu Africa Research Institute vs Attorney General & NGO Bureau.

Counsel prayed that the current suit be dismissed with costs.

In response, counsel for the plaintiffs submitted that the suit before the court was filed on 30th November 2021 seeking a declaration that the 1st plaintiff was a director and founding member and contended that they had terminated the engagement of the plaintiff without the mandate under the law. Counsel submitted that the matter sought individual relief.

That the 2nd suit was filed against James Ditai and 4 others. The context of the suit was that they had constituted a constitution that was parallel to the original constitution. That the judicial review sought to review the decisions of the NGO Bureau that among others seemed to institute leadership organs. That civil suit

No. 03 of 2022 was withdrawn and there were no subsisting suits before court. Counsel prayed that the court disallow the prayers.

In reply counsel for the defendants submitted that the parties chose to incorporate an NGO in Mbale and all operations were in Mbale. That he was then estopped from running away from Mbale. Counsel submitted that this suit be dismissed and the same be filed in an appropriate court. Counsel submitted that the plaintiff would not suffer any injustice if the same was filed in the appropriate court.

Counsel for the plaintiff rejoined stating that a party had to file a matter where the cause of action arose. That the letter terminating the plaintiff as the Executive Director originated in Kampala and the reliefs sought were individual. Counsel prayed that the court gives audience to the plaintiffs.

Analysis

The plaintiff has filed multiple suits revolving around the same dispute in different courts which amounts to abuse of court process. This court in **Male Mabirizi v Attorney General (Miscellaneous Application 917 of 2021)** cited with approval the case of in **Chief B. A. Allanah & Ors v. Mr. Kanayo Kpolokwu & Ors N.W.L.R. Part 1507 Page 1, Per Amiru Sanusi Jsc; of the Supreme Court of Nigeria**

“The concept of abuse of court process is not precise as such. It involves peculiar or various conditions, but in a nutshell, the common feature of abuse of process of court centers on improper use of judicial process by a party in litigation aimed or targeting on interference with due administration of justice. To my mind, some of the features of abuse of court process include the under mentioned features, even though they are by no means exhaustive. These features are:

- i. *Filing of multiplicity of actions on the same subject matter against the same opponents on the same issues or numerous actions on the same matter between the same parties even where there is in existence, a right to commence the action.*
- ii. *Instituting different actions between the same parties simultaneously in different courts even though on different grounds.*
- iii. *Where two or more similar processes are used in respect of the exercise of the same right, for instance, a cross appeal and a respondent's notice.*
- iv. *Where two actions are instituted in court the second one asking for relief which may however, obtained in the first, the second action is prima facie vexatious and an abuse of court process. "*

Civil suit No. 03 of 2022 was similar to this suit although it was eventually withdrawn.

The act of filing matters in courts which have not been specifically designed is an abuse of court process. This must be discouraged and it is an act of forum shopping to avoid a specific court division or circuit. This has become a habit for parties to file matters which do not belong to civil division so that they easily get a date for hearing or force the other party to consent.

The second issue for determination is whether the High Court -Civil division is clothed with the jurisdiction to entertain this suit which in the defendant's view arose from Mbale.

This court relies on the case of of ***C.A.T BISUTI v BUSOGA DISTRICT ADMINISTRATION C.S. NO. 83 OF 1969*** wherein court held that;

Under Order 7 rule 1(1), the Plaintiff had the obligation of pleading facts showing that the court had jurisdiction, and a mere assertion that the court had

jurisdiction was not enough. What mattered was not an assertion in the Plaintiff that the court had jurisdiction but a statement of facts showing jurisdiction.

In addition, this court is further buttressed by the case of **ALEXANDER C MUTONGOLE vs NYANZA TEXTILE INDUSTRIES LTD CA NO. 94 OF 1968**, where court noted that;

It is a time-honored practice for lawyers to insert in their complaints what was, in the court's view a useless surplusage, a statement that "this honorable court has jurisdiction". Such statement alone did not bestow jurisdiction upon any court.

The aforementioned authorities are instructive in resolving this issue, the Plaintiff must not just state that court or a division of court has administrative jurisdiction but rather the Plaintiff must plead facts that demonstrate that court has jurisdiction.

This particular suit should have been filed in Mbale since the plaintiff's operations are in Mbale rather than withdrawing the civil suit No. 03 of 2022. The plaintiffs' multiplicity of suits shall not be allowed by this court. This court *suo motu* should in all such circumstances dismiss the suit so that the learned counsel for the plaintiff is able to file a suit in the proper court since the ECCMIS system does not have room or options for transfer of suits by the concerned judicial officer. The advocates should appreciate that there is a new system of dispensing justice and the same shall be defeated by parties choosing to file matters willy-nilly wherever they wish without regard to the nature of the subject matter and territorial jurisdiction.

This suit is hereby dismissed with no order as to costs.

I so order

SSEKAANA MUSA
JUDGE
05th May 2023