THE REPUBLIC OF UGANDA

IN THE COURT OF UGANDA AT KAMPALA

CIVIL APPEAL NO.59 OF 2013

(Arising from the Ruling of the High Court (Civil Division) in HCCS No.185 of 2008 dated 4th October 2012 by Hon. Justice Mr. Benjamin Kabiito)

1. OLIVER NAMYEKA
2. GERALD KATEU ::: **APPELLANTS**
3. STEPHEN IDOIL

VERSUS

PARLIAMENTARY COMMISSION:: RESPONDENT

CORAM

HON.MR. JUSTICE KENNETH KAKURU, JA.

HON.MR. JUSTICE GEOFFREY KIRYABWIRE, JA.

HON.MR.JUSTICE CHEBORION BARISHAKI, JA

JUDGMENT OF THE COURT

This is a first Appeal against the Ruling of the High Court (Civil Division) in HCCS No.185 of 2008 on a preliminary objection delivered on 4th October 2012 by Hon. Mr. Justice Benjamin Kabiito. The Appellants being dissatisfied with this decision filed an Appeal.

INTRODUCTION

The Appellants are the Directors of a Non-government Organisation called Uganda Support for Children and Women Organisation. This Organisation carries out activities that are aimed at assisting students from Northern Uganda get enrolled to study in schools in Kampala district. They filed a suit against the Parliamentary Commission; Attorney General and Oleny Charles in **High Court Civil Suit No.185 of 2008** for a declaration that the arrest of the Appellants who had been testifying before the Parliamentary Session Committee on Social Services within the precincts of Parliament was unlawful, illegal and unconstitutional. They were arrested by the Sergeant at Arms of Parliament. A preliminary objection was raised by counsel for the Respondent during the scheduling conference to the effect that the plaint did not disclose a cause of action against it because the Respondent was a wrong party. Hon. Mr. Justice Kibuuka Musoke found and ruled that the plaint disclosed a cause action against the Respondent.The suit was then re-allocated to Hon. Mr. Justice Benjamin Kabiito because Hon. Justice Kibuuka was re-assigned to the Masaka High Court Circuit and could not continue hearing the case. Hon. Justice Benjamin Kabiito found that he could not rule on cause of action because of the legal principle of *functus officio* but upheld the alternative prayer that the Respondent was improperly joined as a party to the suit and ordered that the Respondent be struck out. The Appellants being dissatisfied with the ruling filed this Appeal.

GROUNDS OF APPEAL

1. **The learned trial Judge erred in law and fact when he ruled that the Respondent was not a proper party to the suit and ordered that the Respondent be struck out.**

2. **The learned trial Judge erred in law and fact when he entertained and ruled on the issue of whether the 1st Respondent was a proper party to the suit when he was functus officio.**

REPRESENTATIONS

The Appellants were represented by Mr. Obiro Eikirapa while the Respondent was represented by Ms. Sickina Cherotich.

DUTY OF THE COURT

This is a first Appeal and this court is charged with the duty of reappraising the evidence and drawing inferences of fact as provided for under Rule 30(1) (a) of the Judicature (Court of Appeal Rules) Directions SI 13-10.This court also has the duty to caution itself that it has not seen the witnesses who gave testimony first hand. On the basis of its evaluation this court must decide whether to support the decision of the High Court or not as illustrated in **Pandya vs. R [1957] EA 336 and Kifamunte Henry vs. Uganda Supreme Court Criminal Appeal No.10 of 1997.**

Ground 1: The learned trial Judge erred in law and fact when he ruled that the Respondent was not a proper party to the suit and ordered that the Respondent be struck out.

Appellant's submissions

Counsel for the Appellant submitted that at the conferencing/scheduling hearing of this Appeal, it was agreed that an issue for hearing be framed as follows:

"... Whether the learned Judge was justified in following the decision in ***Parliamentary Commission vs Twinobusingye Severino*** *Constitutional Application No.53 of 2011 to strike out the Respondent as a party in civil suit No.185 of 2008?"*

Counsel submitted that the first trial Judge Justice Kibuuka made his Ruling at the time when the decision by the Constitutional Court in **Parliamentary Commission vs Twinobusingye Severino** Constitutional Application No.53 of 2011 (hereinafter referred to as the Twinobusingye case) had not been made. He therefore submitted that there was no justification for the lower court to disregard principles of law like *functus officio* and rehear the matter.

Counsel relied on the case of **Paul vs. UEB (In Liquidation) Civil Appeal No. 55 of 2008** where the Appellant was the decree holder against Uganda Electricity Board and had filed an application for consequential orders. At the hearing of the application the Respondent raised a preliminary objection relying on a then recent decision of the Court of Appeal that the Uganda Electricity Board had ceased to exist. The trial Judge upheld the objection and consequently nullified her Judgment. On Appeal against the decision, this court found;

'It is trite that once a Judge pronounces a decision in a matter, he/she becomes functus officio and cannot nullify it by a subsequent decision in a review or in any application. Learned counsel concluded that the decision in constitutional application no. 53of 2011 was not a justification to disregard the principle of functus officio.

Counsel then submitted that the trial Judge misread misconstrued and misapplied the reasoning of the Constitutional Court in the **Twinobusingye Case (Supra)**.

He submitted that the reason why the Constitutional Court held the way it did was because in that case, the Legislature wanted to represent itself through the Parliamentary Commission. He argued that the court held that the Legislature was an Arm of Government and as such the Attorney General was constitutionally mandated to represent it in court and not the Commission.

Counsel submitted that the Appellants did not in any way seek to hold the Parliamentary Commission responsible for the acts of the Social Services Committee but rather for the unlawful arrest by the Sergeant at Arms, an employee of the said Respondent. He contended that the arrest was effected by the Sergeant at Arms an employee and or servant of the Respondent.

He relied on the case of **Kilbourn vs Thompson 103 U.S 168(1881)** where the Sergeant at Arms was found liable for false imprisonment after executing a resolution of the House of Representatives.

He concluded by submitting that the Respondent was the right and proper party to answer these allegations since the Sergeant at Arms was employed by the Respondent and was under the command of the Respondent and therefore was the Respondent's agent.

Counsel agreed with the findings of Justice Kibuuka Musoke that a trial had to be held to determine whether it was the Social Services Committee that committed the offence or the Parliamentary Commission by reason of the actions of the Sergeant at Arms in effecting the arrest.

Respondent's submissions

Counsel for the Respondent supported the Ruling of the trial Judge the Hon. Justice Kabiito that the Parliamentary Commission was not a proper party to the suit. He cited Order 1 rule 10 of the Civil Procedure Rules for the proposition that the name of any party improperly joined as a plaintiff or defendant may be struck out at any stage of the proceedings. He submitted that the court was right to rely on the decision of **Twinobusingye (Supra)**.

Secondly, counsel submitted that the actions that gave rise to the suit were actions committed by a Committee of Parliament and not the Parliamentary Commission itself. Therefore the correct party was the Attorney General and not the Parliamentary Commission.

She concluded by arguing that the continuation of the Parliamentary Commission as party would not only be illegal but also unconstitutional because it violated Article 119 and 250 of the Constitution of Uganda. He relied on the case **of Makula International vs. His Eminence Cardinal Nsubuga** Civil Appeal No.4 of 1981 for the proposition that court could not sanction an illegality once it is brought to its attention.

Learned counsel then prayed that that the court finds that the learned trial Judge B. Kabiito was justified and correct in his finding that the Respondent was not proper party to the suit.

Court's finding and decision

We have considered the submissions of all counsel to this Appeal and authorities provided for which we are grateful.

What this court is tasked to determine is whether it was proper to strike out the Parliamentary Commission as a party to the suit? The main argument for the Respondent was that it was the wrong party and the correct party was the Attorney General. In this regard reliance was had to the decision in the **Twinobusingye case (Supra).**

The rule regarding the adding or removing a party to a suit is found in Order 1 of the Civil Procedure Rules. Order 1 Rule 10 of the Civil Procedure Rules provides:

"...

(1) Where a suit has been instituted in the name of the wrong person as plaintiff, or where it is doubtful whether it has been instituted in the name of the right plaintiff, the court may at any stage of the suit, if satisfied that the suit has been instituted through a bona fide mistake, and that it is necessary for the determination of the real matter in dispute to do so, order any other person to be substituted or added as plaintiff upon such terms as the court thinks fit.

(2) The court may at any stage of the proceedings either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit, be added.

(3) No person shall be added as a plaintiff suing without a next friend or as the next friend of a plaintiff under any disability without his or her consent in writing to being added.

(4) Where a defendant is added or substituted, the plaint shall, unless the court otherwise directs, be amended in such manner as may be necessary, and amended copies of the summons and of the plaint shall be served on the new defendant, and, if the court thinks fit, on the original defendants.

(5) For the purpose of limitation, the proceedings against any person added or substituted as defendant shall be deemed to have begun only on the service of the summons on him or her..."

It would appear that Order 1 Rule 10 is very accommodative in ensuring that the correct party is brought to the case. This is in line with Section 33 of the Judicature Act which provides:

"... The High Court shall, in the exercise of the jurisdiction vested in it by the Constitution, this Act or any written law, grant absolutely or on such terms and conditions as it thinks just, all such remedies as any of the parties to a cause or matter is entitled to in respect of any legal or equitable claim properly brought before it, so that as far as possible all matters in controversy between the parties may be completely and finally determined and all multiplicities of legal proceedings concerning any of those matters avoided..."

It is important to recall who the parties to the suit were at the Trial Court they were:

1. **Oliver Namyeka**
2. **Gerald Kateu**
3. **Stephen Idoil .....Plaintiffs**

Versus

1. **Parliamentary Commission**
2. **Attorney General**
3. **Oleny Charles.....Defendants**

It would appear to us that all the necessary defendants had already been added to the plaint.

On this matter, Hon Mr. Justice V. F. Musoke-Kibuuka in his Ruling dated 30th November, 2011 held as follows (Page 88 ROA):

"... Court will also not, at this stage, comment upon the wisdom behind upon (sic) the unusual phenomenon of suing both the Attorney General and a specific institution of Government as featured in this case.

In the result, the objection raised by the first and third defendants that no cause of action is disclosed against any of them is rejected by court. Indeed the plaint as it stands, irrespective of its other discrepancies, discloses a cause of action against the first as well as the third defendant. This file be re-allocated to another Judge within the Civil Division, as I am now based at the Masaka High Court Circuit..."

Subsequently, when the Hon. Mr. Justice Benjamin Kabiito took over the case the same objection was raised by the defendants but this time armed with a recent decision in the **Twinobusingye case (Supra).** Whereas the Hon. Mr. Justice Kabiito was alive to the legal principles of *Functus Officio*, he in his Ruling dated 4th October, 2012 felt compelled at the stage at which the matter was before him to still follow the **Twinobusingye case (Supra)** on the basis

of the doctrine of *Stare decisis*; and strike out the first defendant. This is because Order 1 Rule 19 (2) provided change of a party improperly joined at any stage of the proceedings. Justice Kabiito further found that it had been held in the **Twinobusingye case (Supra Page 37 ROA):**

> *"... in this matter, the Constitutional Court has held that, it is that Attorney General that is the right party to sue on behalf of the Parliamentary Commission, in respect of all matters concerning a claim against the said commission..."*

With the greatest of respect this finding was misdirection.What the Constitutional Court held in the **Twinobusingye case (Supra)** was:

"...It is clear that the applicant is charged with taking care of the welfare and the wellbeing of the members of parliament and its staff. It is also only mandated to sue and it be sued in regard to matters pertaining to its functions. This is logical enough. Therefore, it is apparent that the applicant's stated desire to defend parliament beyond its (parliamentary commission) statutory functions is constitutionally unsustainable..."

The decision did not refer to *"all claims"* as the learned Judge found. In our view the Constitutional Court raised a functional test. Such a functional test can be derived from Section 6 of the Administration of Parliament Act. Section 6 (e) provides for:

"... Such other staff and facilities as are required to ensure the efficient functioning of Parliament..."

In their pleadings the Appellants allege that the Chairman of Social Services Committee ordered the Sergeant at Arms to have them arrested and they were detained for three days at Central Police station.

Clearly the Hon Justice V. J. Kibuuka was correct in his finding that there was a cause of action against the first defendant. Liability however would be another matter to be determined during the full hearing. The Court had all the necessary parties before it unlike in the **Twinobusingye case (Supra)** and there was no prejudice to the first defendant as the Attorney General was already a party.

The Defendants raising the objection a second time were truly engaging a waste of court's precious time by taking the court backwards on its own Ruling. This has caused an inordinate delay in the disposing of the suit at the trial Court on its merits. It is the clear duty of counsel to see that matters in court are tried as expeditiously and as inexpensively as possible. As Lord Roskill held in the case of **Ashmore V Corporation of Lloyd's** [1992] All ER 486

"... Litigants are not entitled to the uncontrolled use of the court's time. Other litigants await their turn. Litigants are only entitled to so much of the trial Judge's time as is necessary for the proper determination of the relevant issues..."

We agree.

Final Result

This Appeal is upheld with costs to the Appellant. The Trial Court is further directed to continue the hearing of the case to its conclusion.

We so Order.

Dated at Kampala this 30th day of July 2019.

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HON. MR. JUSTICE KENNETH KAKURU, JA.

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HON. MR. JUSTICE GEOFFREY KIRYABWIRE, JA.

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HON. MR.JUSTICE CHEBORION BARISHAKI, JA.