

THE REPUBLIC OF UGANDA
IN THE CHIEF MAGISTRATES COURT OF KAMPALA AT MENGO
CIVIL SUIT NO. 949 OF 2014

EDWARD RONALD SEKYEWA ::::::::::::::::::::::::::::::::::: PLAINTIFF

VERSUS

MAKERERE UNIVERSITY ::::::::::::::::::::::::::::::::::: DEFENDANT

RULING

BEFORE HIS WORSHIP BONIFACE WAMALA CHIEF MAGISTRATE

This matter was coming up for hearing when Counsel for the Defendant raised a preliminary objection to the effect that a wrong procedure was adopted by the Plaintiff in bringing this suit. The preliminary objection was raised and responded to by way of written submissions which were filed by both Counsel.

It was submitted by Counsel for the Defendant that this suit was improperly brought by way of a plaint since the *Access to Information Act 2005* that governs access to information in the hands of public bodies prescribes the course of action to be adopted by an individual allegedly denied access to information. Counsel submitted that *Sections 37, 41 and 42* of the said Act stipulate that the procedure is by filing of complaint /application with the Chief Magistrate which procedure was not adopted by the Plaintiff but rather, the Plaintiff commenced the proceedings as an ordinary suit. Counsel further submitted that by opting to file an ordinary plaint (where the Act specifically provides for a complaint/application) while purporting to enforce the rights under the Access to Information Act, the Plaintiff not only disregarded the applicable law but applied double standards which is likely to occasion delay in the trial of the complaint and thereby lead to abuse of the court process which this court should not allow.

In reply, it was submitted by Counsel for the Plaintiff that contrary to the defence Counsel's ill-conceived interpretation of *Section 37 of the Access to Information Act*, the said provision allows the Plaintiff to lodge a complaint with the Chief Magistrate and does not place any restrictions whatsoever on a Plaintiff who wishes to seek audience before the Chief Magistrate to use any specific form. Counsel submitted that the silence reflected in this provision gives the Plaintiff the authorization to use whichever prudent method or form of instituting the complaint as provided for under the Civil Procedure Act and Rules. Counsel further submitted that under *Section 41 of the Access to Information Act*, all matters under the Act are categorised as civil proceedings. *Under Order 4 of the Civil Procedure Rules* a suit may be commenced by a plaint. Counsel therefore concluded that the Plaintiff's decision to proceed by way of a plaint in filing the present complaint is therefore within the ambit of the law and the objection should be overruled.

Section 37 of the Act provides –

“A person may lodge a complaint with the Chief Magistrate, against the decision of an information officer –

(a) to refuse a request for access; or

(b) taken under section 17(1) or 20(3), in relation to that person”.

Section 41 of the Access to Information Act provides –

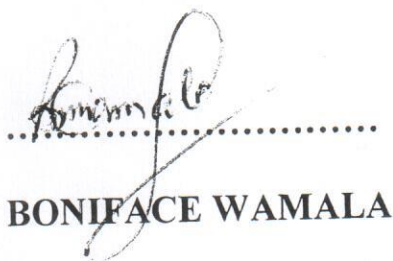
“For purposes of this Act, proceedings on application are civil proceedings”.

I have carefully considered the provision of *Section 37 of the Access to Information Act* and, clearly, the same does not spell out any specific procedure to be followed when making a complaint to this court. In fact, contrary to the claim by defence Counsel herein, the provision makes no reference to an application; it only refers to a complaint. As such, the Plaintiff is at liberty to use of any of the generally and legally accepted modes of commencing a suit which includes, inter-alia, a plaint.

In the premises, I don't find the slightest justification for faulting the Plaintiff for having adopted the procedure of an ordinary suit in seeking for the reliefs he claims before this court. I am in agreement with the submission of Counsel for the Plaintiff that defence Counsel's objection is ill-conceived and based on a wrongful and narrow construction of the provisions of the Access to Information Act. The objection is therefore overruled with costs to the Plaintiff in any event.

It is so ordered

Dated this *7th* day of November 2015



BONIFACE WAMALA

CHIEF MAGISTRATE