THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

MISCELLANEOUS APPLICATION NO. 680 OF 2021

(ARISING FROM HIGH COURT MISCELLANEOUS APPLICATION NO. 361 OF 2015)

ARISING FROM HCCS NO. 719 OF 1997. CCP NO. 3/2008, AND SC CONST. A NO. 05/2010

WANDERA STEPHEN::APPLICANT

VERSUS

1. **GOODMAN AGENCIES LTD**
2. **ATTORNEY GENERAL**
3. **SECRETARY TO TREASURY:::::::::::::::::::::::::::::::::::RESPONDENTS**

BEFORE: HON. JUSTICE SSEKAANA MUSA

RULING

The applicant brought this application to review under **Sections 82** of the Civil Procedure Act Cap 71 and **Order 46 Rule 1** of the Civil Procedure Rules S.I 71-1 to set aside the 'Consent Variation Order' dated 4th/2/2021: The Court Order dated 19th /11/2015 in Miscellaneous Application No. 361 of 2015 be restored and Any consequential Orders be made as court may deem necessary.

The application was supported by the sworn affidavit of the applicant, Wandera Stephen**.**

The 1st respondent filed an affidavit in reply opposing the application sworn by the 1st respondent.

The 1st respondent filed an affidavit to oppose the applicant through Nicholas Were and Kalson Ngolobe while Ramathan Ggoobi- The Permanent Secretary and Seceretary to Treasury filed for the 2nd and 3rd respondents.

The 1st Respondent sued the Government of Uganda through the 2nd Respondent in civil suit No. 719 of 1997 for compensation for loss of the 1st Respondent's trucks occasioned by the Government of Uganda. Following the said suit, the 1st and 2nd Respondents executed a consent to settle the claims of the 1st Respondent.

Consequent to the said consent, the Court added other parties to the Consent after execution of the consent hence the 1st Respondent appealing to the Constitutional Court that awarded interest on the Decretal at 24% per annum from the date of the consent till payment in full. The 2nd Respondent appealed the interest rate to the Supreme Court that lowered the same to 6% per annum from the date of the consent till payment in full.

In execution of the consent judgment in High Court civil suit No. 719 of 1997 together with the 6% interest, the 1st Respondent filed Miscellaneous Application No. 659 of 2012 in the High Court Commercial Division seeking for a mandamus order against the permanent secretary/secretary to treasury Ministry of Finance to be compelled to pay the 1st Respondent monies lest be imprisoned. In the spirit of promptly paying the 1st Respondent monies, the then permanent secretary Ministry of Finance while at the ministry boardroom agreed with the directors of the 1st respondent and her lawyers for the interest on the decretal amount to be reduced to 3% per annum so that the 1st Respondent monies are paid promptly.

Following the agreement between the 1st and 2nd respondents, the 1st Respondent filed **Miscellaneous Application No. 131 of 2021 arising out of M.A No. 659 of 2012** in the Commercial Division of the High Court seeking Court to endorse the Consent Variation Order that reflected the reduced interest of 3%. On 04/02/2021, in the presence of the Directors, shareholders and lawyers of the 1st respondent, counsel for the 2nd Respondent and a representative of the permanent secretary/secretary to treasury Ministry of Finance, the Court endorsed the Consent Variation Order after confirming that the parties to the same had agreed to the variations therein.

The Applicant herein now challenges the signed consent variation Order, claiming his signature was forged, wants the said order reviewed, set aside and the order in Miscellaneous Application No. 361 of 2015 be restored.

The applicant was represented by *Aggrey Bwire* while the 1st respondent was represented by *Esther Tayebwa and Sseninde Saad* and *Johnson Natuhwera* represented 2nd and 3rd respondents.

The parties were directed to file written submissions that have been considered by this court.

Determination& Analysis

The parties have raised several preliminary objections which in my view are wastage of courts time and they do not go to the root of the matter. The major dispute between the parties is about the variation of the consent order for purposes of ensuring that the 1st respondent company would be paid earlier than usual. It is the practice of the 2nd & 3rd respondent to negotiate with the various decree holders where the matter involves huge sums of money negotiate on the interest awarded by court in order to avoid escalation of the interest in lieu of being first tracked in payment.

Following the filing of the Application in Misc. Application No. 500/2019, a meeting was held on 11th June, 2019 at the Ministry of Finance, Planning and Economic Development with all the parties in a bid to stay attachment proceedings in Misc. Application No. 500/2019. During the meeting, the Attorney General's representatives advised the meeting that all the beneficiaries as per MA 362 of 2015 arising out of HCCS179 OF 1997 be considered in the negotiations for settlement save GOODMAN AGENCIES LTD whose Directors and shareholders were still entangled in ownership disputes in the Court of Appeal. As a result, they advised that payment of the award and interest thereon due to GOODMAN AGENCIES LTD as per MA 362 of 2015 arising out of HCCS179 OF 1997 be stayed until Company Cause No. CA 22 OF 2013 in the Court of Appeal is resolved.

As a result of the meeting, a Consent Variation Order was extracted and signed by all parties plus their lawyers' individually save Goodman Agencies Ltd in the following. The Order was filed in Court on 16th September 2019 and served upon the Secretary to the Treasury to effect payments. The beneficiaries of this order included: Emmanuel Hatangi Mbabazi, Felesi Leonidas Janvier Busogi, M/s Kavuma Associates (Valuer), M/S Semuyaba Iga & Co. Advocates, and M/s Okuku and Co. Advocates. The beneficiaries of this variation Order are already paid in full.

In his submissions, the applicant summed up the sufficient reason to warrant review of the consent order as follows;

a) The process leading up to and the manner of execution of the Consent Order on behalf of the 1st Respondent was/is both improper and illegal.

b) The terms of the Consent order itself are illegal and in contravention of the law.

It is the applicant's evidence that he was never consulted and that his signature is a forged and this in his view should be the ground to set aside the variation consent order made before the court. However, what is also undisputed is that the Consent variation Order has already been executed different parties have already taken benefit of the same and it is only the shareholders and Directors of the 1st respondent who are yet to receive their payment.

Companies operate through a Board of directors and ordinarily should not operate individually which would require every member/shareholder to sign on company documents as directors or shareholders. Therefore the validity of documents executed by a company should always be premised on the majority decision made at Board meeting or General meeting. The companies capacity to execute a contract just like the "Consent Variation Order" is premised on what the majority of the members of the company have resolved and not on the whims of an individual shareholder or director. In the case of ***Irene Kulabako v Moringa Limited & 2 Others Company Cause No. 21 of 2009***; Justice Bamwine held that: *" I would add that matters of managing the company are better resolved in the company board room. In meetings, members normally express their wishes as to how the affairs of the company ought to be run. This is done through voting for and against resolutions. The decision of the majority will normally prevail."*

Company matters should come to court as a last resort and the court should discourage the practice of every shareholder and more so a minority to act in a manner that frustrates the general or majority interest under such derivative actions except in those cases of minority oppression and actions that are detrimental to the operations or general survival of the company. The Registrar of companies is mandated to resolve such company issues and also determine disputes between the shareholders and

members and should always be the first dispute resolution tribunal in company issues.

The fraud (forgery) alleged by the Applicant is an internal management issue for which the 2nd and 3rd Respondents should not be made to suffer. A document executed by a Director and the Company Secretary of the company or by 2 directors of a company and expressed to be executed by the Company has the same effect as if executed under the seal of the company.

Pursuant to **Section 53 and 55 of the Companies Act 2012,** the 2nd and 3rd Respondents acted and relied on the said consent variation order executed by the company (*pursuant to which Government has already effected payments*) to be required to make further inquiries to establish the bona fides of the document. As long as 2 or more Directors have executed the same, it will be taken as having been executed under the common seal of the Company. ***See Court of Appeal Civil Appeal No. 219 of 2013, Necta (U) Ltd & John Ndyabagye v Crane Bank Limited.***

At common law, a person dealing with or acting in good faith and without knowledge of any irregularity, need not inquire about the formality of the internal proceedings of the corporation, but is entitled to assume that there has been compliance with the articles and bylaws. This principle, known as the 'indoor management rule', was authoritatively laid down in the case of *Royal British Bank v Turquand* (1856), 6 EL & BL 327.

> *"a person dealing with a corporation has no obligation to ensure that a corporation has gone through any procedures required by its articles, by-laws, resolutions, contracts, or policies to authorize a transaction or to give authority to a person purporting to act on behalf of the corporation."*

In the case of ***Martin v Artyork Investments Ltd, Martin v Artyork Investments Ltd*, 1991 Carswell Ont 2024 (OCJ),** *Court held that*

> *"in effect, codifies the indoor management rule laid down… in Royal British Bank v Turquand… which held that bona fide outside persons dealing with a corporation are entitled to assume that its internal procedures have been properly complied with".*

The applicant's case for review as a person aggrieved is premised on forgery of his signature and he has gone at length to distance himself from the said variation consent order. It is therefore clear that this application premised on forgery and forgery is not one of the grounds for review. Forgery is a serious allegation that squarely falls short of being pleaded under section 82 of the Civil Procedure act and Order 46 of Civil Procedure rules.

In ***Kampala Bottlers Ltd vs Damanico (U) Ltd, SCCA No.22 of 1992***, it was held that;

> *" fraud must be strictly proved, the burden being heavier than one on balance of probabilities generally applied in civil matters*, it was further held that;
>
> '*The party must prove that the fraud was attributed to the transferee. It must be attributable either directly or by necessary implication, that is; the transferee must be guilty of some fraudulent act or must have known of such act by somebody else and taken advantage of such act*."

The general rule is that fraud must be pleaded specifically. This was the holding in ***Yahaya Walusimbi vs. Justine Nakalanzi & 4 Ors M.A 386 of 2018.*** In this case *the Court Held that;*

"……..we [too] would not hesitate [by order] to set aside [our] judgment based on fraud under our inherent powers". However, we hasten to add

that before exercising that power to make such order, we would have to be satisfied on three conditions; namely that the fraud is proved strictly, that the judgment is based on that fraud and that the order is necessary either for achieving the ends of justice or prevent abuse of court process……..This alleged fraud has not been proved and cannot be proved by affidavit evidence. Ideally, the parties would have to apply to adduce fresh evidence which we think will meet the ends of justice if adduced in the trial court and not this court…….”

The Applicant’s allegations can’t be conclusively dealt with by mere Affidavit evidence and such serious allegations of fraud cannot be decided on the strength of imagination (by affidavit). See Kampala Bottlers vs Damanico (supra)

Additionally, the aspect of the alleged forged signature of the Applicant if raised as in this matter can be dealt with only through a suit in which evidence of the alleged forgery can be adduced and scrutinized through cross examination as fraud is of strict proof. The mere lack of similarity in signature cannot be the basis of contending it is a forgery. The applicant could have inserted a different signature for a purpose or deliberately to cause confusion and disharmony. This is the main reason why a suit is best suited to determine issues of forgery or fraud. The handwriting expert report generated specifically for purposes of denying the signature on a specific document should be cautiously admitted since it is made to achieve an intended aim.

It is a well settled principle that parties to a civil suit are free to consent to a judgment or compromise a suit in whatever terms they deem fit provided they are lawful and enforceable.

In the case of ***Attorney General & Anor v James Mark Kamoga & Anor SCCA No. 8 of 2004,*** the Supreme Court held that;

A consent judgment has to be upheld unless it is vitiated by the fact that it was entered into without sufficient material facts or in misapprehension or in ignorance of material facts, or it was actuated by illegality, fraud, mistake, contravention of court policy or any reason which would enable the Court to set aside an agreement **(See also *Hirani v. Kassam (1952) EACA 131)***

It is the duty of the court to satisfy itself with regard to the terms of the consent agreement that it is lawful and enforceable. The court should not act in a casual manner without satisfying itself with the legalities of the consent or compromise of a case. Where it is alleged by one party that a compromise or consent is not lawful, it is the duty of the court to decide that question. See ***Banwari Lal v Chando Devi [1993] 1 SCC 581***

I have carefully analysed the facts of this case and its history and come to a conclusion that this consent variation order was made in good faith with a view of getting payment from government. The applicant cannot claim any special treatment in the company to be consulted at every stage of ensuring that company and its shareholders in order to take full benefit of the fruits of their judgment. The arguments of the applicant's counsel that a judgment of court cannot be varied are very misplaced and off target. A successful party can consent to any terms of his payment but not on legal positions and pronouncements made in the Judgement or Ruling.

Therefore, the Consent Variation Order entered between the 1st respondent on one hand and the 2nd and 3rd respondents on the other hand was validly executed.

This application is dismissed with costs.

I so order.

SSEKAANA MUSA
JUDGE
10th December 2021