THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(COMMERCIAL DIVISION)

CIVIL REFERENCE APPEAL NO. 0003 OF 2023

1. NATIONAL AGRICULTURAL ADVISORY SERVICES (NAADS)
2. ATTORNEY GENERAL :::::::::::::::::::::: APPLICANTS

VERSUS

1. BYARUHANGA FRANK
2. DR. FRANCIS RUNUMI
3. GEORGE OWAKUKIRORU
4. TUMWESIMIRA CALEB KIPANDE
5. ARINEITWE SAM KAJOLO
6. TUMUSHABE JULIUS
7. KANYAMUNYU JULIUS
8. REV. BYAMUGISHA BERNARD :::::::::::::: RESPONDENTS

BEFORE: HON. JUSTICE HARRIET GRACE MAGALA

JUDGMENT

Background

The Respondents sued the Applicants vide HCCS No. 889 of 2019 for compensation of tea seedlings that dried up in their nursery beds as a result of Government's failure to

honour a guarantee demand issued by the Ministry of Agriculture, Animal Industry and Fisheries.

The claim against the Defendants in the suit was settled when the Parties executed a consent decree / judgment that was endorsed by the Learned Registrar of the Court on the 8th January 2021 in the following terms:

1. That the Parties acknowledge that the number of tea seedlings estimated to have been planted in the acreage verified by GPS in the districts of Rubanda, Rukiga, Rukungiri, Ntungamo, Kisoro, Kabale, Mitooma and Kanungu is 106,640,606 valued at Ugx. 42,656,242,400/=;
2. That of the above amount in paragraph I, Ugx. 8,237,098,116 has already been paid to the eligible nursery bed operators and Ugx. 7,118,326,249 has been committed for payment by NAADS;
3. That the Parties acknowledge that the outstanding balance is Ugx. 27,300,818,035/= and agree that this amount shall be paid in a phased manner;
4. That the Parties further agree that an interest of 20% of the claim in paragraph 1 per annum for a period of 3 years shall be paid to cater for the time factor and inconvenience that was caused to the Plaintiffs amounting to Ugx. 25,593,745,440/;
5. That 40% of the total value of the tea seedlings that the Government was unable to procure shall be paid after a joint verification exercise by the Parties as per the terms

of reference to ascertain the quantum of the seedlings that were not evacuated from the nursery beds;

6. That the terms of reference referred to in paragraph 5 above shall be developed by the Parties and the said exercise in paragraph 5 shall commence within one month from the date of signing this consent;
7. That the Parties agree that all outstanding payments will be paid to the bank account provided by the Plaintiffs starting with Ugx. 27 Billion in the financial year 2020/2021 and the balance in the financial year 2021/2022;
8. That the taxed costs of this matter be awarded to the Plaintiffs; and
9. That the Plaintiffs withdraw the suit against all the Defendants.

The Respondents then sought to execute the Consent Decree and the taxed bill of costs vide Execution Application No. 151 of 2023. The learned trial Deputy Registrar allowed the Application and the Applicants being dissatisfied with orders of the learned trial Deputy Registrar filed an appeal to have the orders set aside. The issues for determination before the Learned Trial Registrar were:

a) Whether the judgment debtors varied clause 3 of the Consent Judgment dated 8th January 2021 to reduce the interest rate from 20% to 10%;

b) Whether the sum now being claimed under clauses 5 and 6 of the Consent Judgment has been lawfully verified; and

c) Whether execution can issue against the Judgment debtors in the manner applied for by the Applicants.

In respect of issue one, the Learned Registrar found that the interest of 20% as stated in the Consent Judgment / Decree was binding upon the Parties. In respect of issue number two, the Learned Trial Registrar found that the total outstanding sum under the Consent Judgment was Ugx. 75,932,763, 894/=. Lastly, in respect of issue number three, the Learned Trial Registrar found that the execution application against the Respondents was premature. The Applicants were advised to extract the Decree with the verified sums and serve it upon the Respondents demanding for payment. It is only after the Respondents failed to comply that execution proceedings would issue against them.

The Applicant filed this appeal against the Ruling of the Learned Registrar, seeking the following orders:

(a) That the Ruling and Orders of Her Worship Hatanga Harty Juliet, Deputy Registrar Commercial Division in Execution Miscellaneous Application No. 0151 of 2023 issued on 18th July 2023 be set aside.

(b) That the Learned Deputy Registrar erred in law and fact when she exercised her discretion injudiciously and ordered for additional payments of UGX 61,022,340,161/- which were unverified in the original Decree.

(c) That the learned Deputy Registrar erred in law and fact when she ordered reinstatement of 20% interests after the Respondents had accepted 10% as interest to be applied on the amounts already paid by the Applicant.

(d) That the learned Deputy Registrar erred in law and fact when she failed to evaluate the evidence that the parties considered to be verified for payment under Clause 5 of the Consent were not parties to the representative order in HCCS No. 889 of 2019.

(e) That the costs of this Application be granted to the Applicants.

The Affidavit in support of the Application was deposed by Mulumba Evarist, an Agri-Business Development Officer with the 1st Applicant. The same shall be relied upon in determining this matter. The affidavit in reply opposing the application was deposed on behalf of the Respondents by Byaruhanga Frank, the 1st Respondent.

Representation and Hearing

The Appellants were represented by the Attorney General's Chambers while the Respondents were represented by M/s MAGNA Advocates and M/s Pathways Advocates. The Court gave Parties directions to file their written submissions but only the Respondents complied.

Respondents' Submissions

Counsel for the Respondents reminded this court of its duty to subject the entire evidence on record to fresh and exhaustive scrutiny, reevaluate it and come to its own conclusion, it being a first appellate court. Counsel argued the grounds of appeal starting with ground two, and grounds one and three were jointly argued.

Ground Two

Counsel for the Respondents submitted that the learned Deputy Registrar did not order reinstatement of 20% interest as alleged since there was no such order from the ruling or the extracted order on court record. That the allegation that the court ordered for reinstatement of 20% interest after the Respondents apparently accepted 10% as interest was an incorrect representation of the finding and orders of the Registrar. Therefore, this ground is deliberately framed to misguide the court and is premised on a non-existing order.

Counsel further argued that there was no court order on record varying or setting aside the terms of the Consent Decree to reduce the interest rate from 20% to 10% per annum and thus the consent recorded on the 8th January 2021 stands and binds all the parties. The purported letter varying the consent was contested by the Respondents and the learned Deputy Registrar was given clarification on the letters. It was the submission of the Respondents that any variation of the Consent Judgment/ Decree would amount to a post judgment compromise which had

to be endorsed by the Court. The Court record had no such variation order. He relied on the case of **Dison *Okumu and others Versus Uganda Electricity Transmission Company Ltd and others SCCA No. 18 of 2020*** to buttress his argument where court held that:

> "*The judgment on admission was passed by a judge of the High Court. The post judgment compromise was equally endorsed by a judge of the High Court. A post judgment compromise once endorsed by court becomes a judgment of court".*

Learned Counsel for the Respondents therefore prayed that the Court finds that the Learned Trial Deputy Registrar did not reinstate the interest rate of 20%.

Grounds One and Three

Learned Counsel for the Respondents submitted that the contention that the learned Deputy Registrar ordered for additional payments of UGX 61,022,340,161/- was misleading as it suggested that there was no provision in the consent decree for payment of additional sums upon verification. That clauses 5 and 6 of the Consent Decree were made for additional sums to be paid for 40% of the value of the seedlings that Government was unable to procure.

That the Consent did not indicate that the outstanding balance at execution would be full and final settlement, but the Appellants are trying to unilaterally vary the terms of the consent by excluding clauses 5 and 6, by which they are bound.

Further submission was made that under the Application for execution, the Respondents adduced evidence of the verification done in pursuance of the terms of clauses 5 and 6 of the consent judgment. This evidence indicated the participation of the Appellants in the verification process and it was never disputed by the Appellants. Relying on the case of ***Namusisi Kellen Nyamurungi Versus Nakamya Gertrude & others HCMA 312 of 2020*** it was submitted for the Respondents that the Appellants did not file an affidavit in rejoinder. The law was that where facts are set out in an affidavit in reply which merit a response thereto from the Applicant by way of an affidavit in rejoinder and no such affidavit in rejoinder is filed, they are deemed admitted.

Counsel submitted that the assertion that the parties considered to be verified for payment under clause 5 of the Consent were not parties to the representative order in HCCS No. 889 of 2019 was never raised before the learned Deputy Registrar. The alleged nonparties have not been listed and their alleged computation. Therefore, court cannot act on speculation but rather evidence presented before it. He referred to ***Advocates Coalition for Development and Environment & Others Versus AG and another Constitutional Petition No. 14 of 2011***. The allegation of the Appellant was not supported by any evidence. The Respondents have demonstrated to court that the agents of the Appellants participated in the verification exercise as per the proof attached to the affidavit in reply to the execution application and the one sworn in opposition of this Appeal. All the information confirms that at all material times the Appellants

agents participated in the verification exercised from which the verified sum was extracted.

The Respondents, in conclusion submitted that the Learned Trial Registrar exercised her discretion judiciously and acted within the confines of the law and the Consent Judgment / Decree as executed by the Parties. That this Appeal ought to be dismissed with costs.

Determination of the Appeal

It is the duty of a first appellate court to review and re-evaluate the evidence before the trial court and reach its own conclusions. The first appellate court puts the evidence presented before the trial court to a fresh and exhaustive scrutiny before making its own judgment and conclusions. See. ***Kifamunte Henry V Uganda SCCA No. 1 of 1997 and Father Nasensio Begumisa and others Versus Eric Tibebaga and others SCCA No. 17 of 2000***.

Grounds one and three

These grounds were argued concurrently by the Respondents and since they are interrelated, this court shall resolve them jointly.

The grounds are:

That the Learned Deputy Registrar erred in law and fact when she exercised her discretion injudiciously and ordered

for additional payments of UGX 61,022,340,161/- which were unverified in the original Decree and;

That the learned Deputy Registrar erred in law and fact when she failed to evaluate the evidence that the parties considered to be verified for payment under Clause 5 of the Consent were not parties to the representative order in HCCS No. 889 of 2019.

I have reproduced clauses 5 and 6 of the Consent Judgment / Decree in the background to this Appeal. I shall therefore not reproduce them here. The two clauses in my view must be read together and not in isolation of each other.

The learned Deputy Registrar found that there was evidence on record that there was a verification carried out in accordance with clauses 5 and 6 of the Consent Judgment/Decree. She therefore established that pursuant to clauses 5 and 6 of the Consent Judgment/Decree, and as per the verification documents, the verified amount was UGX 61,022,340,161/-.

I have examined the record of the trial court and this Appeal and observed that whereas the documents on record indicate that verification exercises were carried out, they were not done in accordance with Clauses 5 and 6 of the Consent Judgment/Decree. I am mindful that a consent judgment is a new contract with new terms as executed between the parties. Its interpretation should be restricted to the construction of its clauses and the intention of the parties at the time of execution. The court cannot speculate what the parties intended or attempt

to construct for the parties a better phrased contract but rather, interpret the clauses within the confines of the terms of the contract/consent.

Clause 5 of the Consent Decree dictates that there shall be joint verification by the parties of the quantum of the seedlings that were not evacuated from nursery beds. Under clause 6 of the Consent Judgment, the joint verification was to be done in accordance with the terms of reference developed by the parties.

This court notes that the verification documents presented before the learned Deputy Registrar in Execution Miscellaneous Application No. 151 of 2023 include amongst others verification reports that were generated by the respective District Local Governments (that were co-defendants in Civil Suit No. 889 of 2019), following a meeting between them and the Minister of Agriculture, Animal Industry and Fisheries, Hon. Frank Tumwebaze. The documents on the court record do not show terms of reference as developed by both parties and signed off by the Parties as a sign that both Parties agreed to those terms. I also observed that the court record does not have any document which shows that a joint verification exercise was carried out between the Parties to HCCS No. 0889 of 2019. What is on record is a verification that was carried out by district officials, representatives of Ministry of Agriculture and NAADS. And in some instances a representative of the tea nursery operators. I also observed that the documents presented in court do not have a record of attendance showing that the Respondents were present during the said verification, registered their presence or

attendance and signed off the verification reports as an accurate record of what transpired during the verification exercise. What was presented before the Learned Deputy Registrar was a summary that was extracted by the Respondents showing that the number of districts involved were ten (10), the number of nursery bed operators was seven hundred and ninety-five (795), the number of tea seedlings was three hundred and seventy-three million, nine hundred and ninety, one hundred thirty-seven (373,990,137), the 100% value of the seedlings that dried up was Ugx. 159,508, 779, 903/= and the economic loss assessed at 40% was Ugx. 61,022,340,161. This figure was arrived at following various verification exercises which, in my view were not conducted in accordance with clauses 5 and 6 of the Consent Judgment/Decree as explained above and as illustrated below:

a) The Office of Chief Administrative Officer of Kamwenge District Local Government in a letter dated 3rd March 2022 addressed to the Permanent Secretary Ministry of Agriculture, Animal Industry and Fisheries **re-submitting** a list of verified nursery operators and tea seedlings **as at 27th July 2016.** The letter goes on to state that the District did not procure any tea seedlings from the Operators between 2015 and 2018. This implies that there was no verification exercise carried out at all. The information submitted to the Permanent Secretary pre-dated the executed Consent Judgment /Decree between the parties to the main suit;
b) The letter dated 24th June 2019 from the Office of the Chief Administrative Officer of Kabale District Local Government to the Executive Director of National Agricultural Advisory

Services (NAADS) indicates a list of twenty-one (21) suppliers who supplied the District with tea plantlets valued at Ugx. 850,114,350/=. Based on this information and the meeting held on the 13th February 2022, as per the letter dated 23rd February 2022, a team comprising of **the LC V Chairperson, the Chief Administrative Officer (CAO), Resident District Commissioner (RDC), District Internal Security Officer (DISO) and Operation Wealth Creation (OWC) Coordinator and the District Production Officer** carried out a validation exercise to assess the economic loss claims. The letter refers to a Report of this exercise which was signed on the 23rd February 2022 by Ntimba Edmond-the CAO, Godfrey Nyakahuma, Mutabzi Reuben-the DISO, Lt. Col. Charles Mtebaruga- the OWC Coordinator and Zikampereza Phillip- the Chairman Kabale Tea Nursery Operators. One can therefore not ascertain whether the Respondents were part of the verification exercise. The letter dated 23rd February 2022 was finally followed by one dated 10th June 2022. Of interest to court is the second paragraph of this letter which states that:

> "*The previous submission was based on the nursery beds that were existing and verified in January 2016. The additional submission is based on validation nursery bed verification that was done in March 2018. The purpose of this communication is to forward the additional validation report for consideration in regard to economic loss compensation. The validation involved review of existing verification reports, our submissions*

to NAADS for payments and payments done by NAADS since 2016 to date. The Team also confirmed prior existence for nursery beds by talking to LC 1 Chairpersons.

From the above, it is my considered opinion that the validation by Kabale District was not carried out in accordance with clauses 5 and 6 of the Consent Judgment/ Decree.

c) I made the same observation in respect of the verification exercise carried out by Kisoro District. The letter from the District CAO dated 15th February 2022 only forwarded a list of tea nursery bed operators with their respective quantities of tea seedlings that dried up in their nurseries. The letter and the attached list was signed by the LC V, RDC, OWC Coordinator, DISO, Principal Agricultural Officer and the Representative of Tea Nursery Bed Operators. A detailed report showing when and how the verification was carried out; and who were the parties present was not produced in court.

I have only illustrated by my point using three districts as examples. I further observed that the same trait runs through all the documents on the court record presented by the various districts as proof of carrying out verification exercises.

It was the contention of the Respondents that the Attorney General through the Solicitor General, handed over the duty to the Appellants to verify tea seedlings that dried up in nursery

bed. I have examined the contents of the letter dated 27th July 2021 from the Solicitor General to the Permanent Secretary of the Ministry of Agriculture, Animal Industry and Fisheries. The said letter actually guided the Ministry to formulate terms of reference for the intended verification exercise. The absence of these terms of reference is what gives rise to the contention that alleged verification reports contained persons that were never parties to HCCS No. 889 of 2019. My understanding is that this contention would not have arisen had the terms of reference been developed and a joint verification exercise carried out based on those terms.

I therefore find that the Learned Deputy Registrar erred in considering an amount of UGX 61,022,340,161/- as the verified amount as envisaged under clauses 5 and 6 of the Consent Decree in the absence of evidence on record that there were terms of reference and that there were joint verification exercises carried out between the Parties.

The Appellants further contend that the Deputy Registrar exercised her judicial discretion injudiciously and ordered for additional payment of Ugx 61,022,340,161/- which was unverified in the original decree.

Judicial discretion was defined in the case of ***Attorney General Vs Gladys Nakibuule Kisseka Constitutional Appeal No. 2 of 2016*** to mean;

> *".. the power or right given to an individual to make decisions or act according to his/her own judgement. Judicial discretion is therefore the power of a judicial officer to make legal*

decisions based on his/her opinion - but I hasten to add- but within general legal guidelines. In Black's Law Dictionary 5th Edition, "judicial and legal discretion" is defined as "discretion bounded by the rules and principles of law, and not arbitrary, capricious, or unrestrained." Judicial discretion does not provide a license for a judge to merely act as he or she chooses."

Therefore, judicial discretion connotes the exercise of judicial power within the judicial officer's reasonable opinion in relation to facts of the matter at hand and the law applicable. A difference in opinion of the appellate court from the trial court does not mean the trial court necessarily abused its judicial discretion. ***See. UDB V G.M Combined (U) Ltd and another SCCA No. 28 of 1995***.

According to the Court, the Learned Deputy Registrar relied on the documents presented to her by the Respondents and upon examining them came to a conclusion that joint verification exercises had been carried out. I therefore do not find she abused her judicial discretion.

Ground two of this Appeal.

That the learned Deputy Registrar erred in law and fact when she ordered reinstatement of 20% interests after the Respondents had accepted 10% as interest to be applied on the amounts already paid by the Applicant.

Clause 4 of the Consent Judgment / Decree stipulated that:

"That the parties agree that an interest of 20% of the claim in paragraph 1 per annum for a period of 3 years shall be paid to cater for the time factor and the inconvenience that was caused to the Plaintiff amounting to UGX 25,593,745,440 (Twenty Five Billion Five Hundred Ninety-Three Million, Seven Hundred Forty Five Thousand Four Hundred Forty Shillings)."

It is contended by the Appellants that this interest was accepted to be varied by the Respondents to 10% and therefore the learned Deputy Registrar erred when she ordered payment of an interest of 20% yet the Respondents had agreed to reduce the interest to 10%. It is trite that once a consent judgment has been agreed and executed by the parties, it forms a fresh agreement between the parties and can be set aside or varied in few and specified circumstances of mistake, misrepresentation, fraud and public policy. ***See. Attorney General and another Versus James Kamoga and another SCCA No. 8 of 2004***.

Counsel for the Respondents has rightly submitted that a variation to a consent agreement must be executed by the parties to the consent and endorsed by the Court. I agree with the submission of the learned counsel for the Respondent.

There is no such variation decree to the Consent entered by the parties on 8th January 2021. The contested letter dated 19th May 2021 from M/s Pathways Advocates to the Attorney General could not vary the Consent Decree. Paragraph two of the said letter states that:

"*In the same meeting, I was informed of the decision to vary the earlier communicated interest rate to 20%. Without prejudice to the foregoing, I wish to state that the Plaintiff in the matter are agreeable to a minimum of 10% for three years so that the matter can be quickly resolved".*

Further to the above, the last sentence of the said letter states that:

" This is, therefore , to convey the herein mentioned position for your consideration".

The Appellant did not adduce any evidence in court to show that the without prejudice proposal from the Respondent was accepted by the Attorney General, thereby necessitating a need to vary the Consent Decree /Judgement and that the same was recorded by Court.

A consent Judgment once endorsed by court, it becomes a full and final settlement of the dispute between the parties under the terms set in that consent judgment. It is an Order/Decree of the Court which cannot be varied or reviewed by a mere letter from one of the parties' advocates. I therefore uphold the finding of the Learned Registrar that Clause 4 of the Consent Judgment was never varied by a mere letter and therefore the Parties are bound by it.

This ground fails.

This Appeal partially succeeds and court makes the following orders:

a) That the parties develop terms of reference for the joint verification exercise of the seedlings not evacuated from nursery bed operators within one month from the date of delivery of this judgment;

b) That the verification exercise should be conducted jointly by the parties within a reasonable time but in any case, not later than two months from the delivery of this judgment;

c) That the Appellants shall be pay the Respondents an interest of *UGX. 25,593,745,440 (Twenty-Five Billion Five Hundred Ninety-Three Million, Seven Hundred Forty-Five Thousand Four Hundred Forty Shillings)* as agreed under clause 4 of the Consent Judgment /Decree;

d) The Appellants shall be pay the Respondents UGX. 27,300,818,035/- as the outstanding balance as agreed under clause 3 of the Consent Decree;

e) The Appellants shall pay 40% of the verified and approved value of the seedlings not procured by the Government after a joint verification exercise;

f) The Appellants shall pay the Respondents taxed costs in HCCS No. 889 of 2019 amounting to UGX 1,015,860,348/-; and

g) Each party shall bear its own costs.

Dated and signed at Kampala this **25th** day of **March 2024.**

Harriet Grace MAGALA

JUDGE

Delivered electronically on ECCMIS this 27th day of **March 2024.**