THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UAGANDA AT KAMPALA

CIVIL APPEAL NO. 28 OF 2017

(Arising from the Ruling of the High Court (Civil Division) in Civil Suit No. HCCS No.49 of 2014 *delivered by Hon. Mr. Justice Stephen Musota)*

1. **DISON OKUMU**
2. **EDWARD UDHEC RUBANGA**
3. **JOSEPH HENRY NDAWULA**
4. **JAMES NANTALE**
5. **STEPHEN MUKASA**
6. **FREDERICK JOHN MUBIRU**
7. **JOSEPH MUTATINA**
8. **OYELLA ROSE EVE OPIRO**
9. **MARY WACHA**
10. **STEPHEN EPILU**

APPELLANTS

VERSUS

1. **UGANDA ELECTRICITY TRANSMISSION COMPANY**
2. **UGANDA ELECTRICITY DISTRIBUTION COMPANY**
3. **UGANDA ELECTRICITY BOARD (IN LIQUIDATION)**
4. **ALEX BASHASHA T/A BASHASHA & CO. ADVOCATES**

RESPONDENTS

5. **POUL NYAMARERE**
6. **HENRY KYAMBADDE**

7. JOHN WALUGO
8. JOSEPHINE NAKAFERO

CORAM

HON. MR. JUSTICE KENNETH KAKURU, JA

HON. MR. JUSTICE GEOFFREY KIRYABWIRE, JA

HON. MR. JUSTICE CHRISTOPHER MADRAMA, JA

JUDGMENT OF THE HON. MR. JUSTICE GEOFFREY KIRYABWIRE, JA

INTRODUCTION

This is a first Appeal from the Ruling on preliminary points of law rendered by Hon. Mr. Justice Stephen Musota of the High Court (Civil Division) and delivered on 27th October, 2016 in favour of the Respondents. The Appellants were dissatisfied with the said Ruling hence this Appeal.

BACKGROUND

The Appellants are all former employees of the defunct Uganda Electricity Board who had their employment terminated and transferred to Uganda Electricity Distribution Company Limited and Uganda Electricity Transmission Company Limited as part of the restructuring of the Electricity sector. The Fifth, sixth, seventh and eighth Respondents (hereinafter referred to as "the fifth to eighth Respondents") sought and were granted leave to file representative suits on behalf of the former employees of the defunct Uganda Electricity Board Uganda, Electricity Distribution Limited and Uganda Electricity Transmission company

(hereinafter referred to as "UEB", "UEDCL " and "UETCL" respectively). The fifth to eighth Respondents had instructed the fourth Respondent's law firm to file and prosecute the following representative suits on behalf of the former employees of UEB who had their employment contracts terminated. The suits that were filed were;

I. HCCS No. 138 of 2008: Paul Nyamarere & Henry Kyambadde V UETCL, UEB (In liquidation) and the Attorney General.

II. HCCS No.967 of 2005: Walugo John & ors V UETCL, UEDCL, UEB (In Liquidation) and the Attorney General.

III. HCCS No. 760 of 2006: Josephine Nakafeero & 7 ors V UETCL, UEDCL, UEB (In Liquidation) and the Attorney General.

On the 13th July 2012, the above suits were consolidated with HCCS 138 of 2008 vide HCMA 234 of 2012. Judgment was entered on admission in favour of the fifth to eighth Respondents as representatives of the plaintiffs and others for Ug Shs. **47,972,421,017/=** (forty seven billion nine hundred seventy two million, four hundred twenty one thousand seventeen shillings only) because UEB and its successors in title conceded to owing pension arrears and unpaid gratuity to its former employees. Costs of the Judgment was to be met by the Defendants.

The Appellant (as Plaintiffs) then filed Civil Suit No. 49 of 2014 at the High Court of Uganda at Kampala against the Respondents claiming that the said Judgment on admission was unlawful, contrary to court and public policy and violated the terms of the Appellant's gratuity, statutory and contractual rights because it authorized the deduction of the Advocates fees from pension and gratuity belonging to the Appellants and other people represented by the fifth to eighth

Respondents. The Plaintiffs at the trial Court sought the following orders inter alia that:

i. the consent taxation Order entered into in HCMC 272 of 2013 be set aside;

ii. the compromise dated 31st May 2013 in respect of HCCS No. 967 of 2005, HCCS 760 of 2006 and HCCS 138 of 2008 be set aside in whole or in part to exclude any levy of the or attachment of the plaintiff's pension or gratuity in favour of the fourth defendant/Advocates;

iii. the admission entered in to on the 13th July, 2012 be set aside in part as long as it purported to authorise the deduction of Advocates fees from pension or gratuity and

iv. the defendants jointly and severally reimburse any payments made to the fourth defendant.

The Respondents (as defendants) at the trial court raised several preliminary objections namely;

a. that the suit that was incompetent because the plaintiffs had no Locus standi to bring the suit,

b. that court was not the right forum,

c. that the procedure adopted in filing a fresh suit was wrong and

d. that the suit was Res judicata.

The trial Court upheld all the preliminary objections and dismissed the suit hence this Appeal.

REPRESENTATION

The Appellant was represented by Mr. Oscar Kihiika (SC) assisted by Mr. Anthony Bazira while the first, second, and third Respondents were represented by Mr. Simon Anyur. The rest of the Respondents were represented by Mr Lawrence Madete and Innocent Abomugisha.

DUTY OF COURT

This is the 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 to caution itself that it has not seen the witnesses who gave testimony first hand. Based on its evaluation this court must decide whether to support the decision of the High Court or not as illustrated in **Pandya v R [1957]** EA 336 and **Kifamunte Henry v Uganda** Supreme Court Criminal Appeal No.10 of 1997.

GROUNDS OF APPEAL

1. **That the trial Judge erred in fact and in law when he found that the suit was incompetent for failure to add the Attorney General and the beneficiaries of the compromise/Judgment as parties to the suit.**
2. **That the trial Judge erred in law in finding that the suit was barred by Res judicata.**
3. **That the trial Judge erred in fact and law in deciding that the appellant had no locus standi to file a suit to set aside consent orders.**
4. **That the trial Judge erred in fact and in law when he decided that the suit filed in the High Court to be set aside consent orders was before a wrong forum.**
5. **That the trial Judge erred in fact and in law in deciding that HCCS No.49 of 2014 was filed using wrong procedure.**

Legal Arguments

Ground 1: That the trial Judge erred in fact and in law when he found that the suit was incompetent for failure to add the Attorney General and the beneficiaries of the compromise/Judgment as parties to the suit.

Appellant's submissions

Counsel for the Appellant submitted that trial Judge erred in law and in fact when he found that the suit was incompetent by reason of the failure to add the Attorney General and other beneficiaries of the compromise /Judgment as parties to the suit.

Counsel for the Appellant argued that the Civil Procedure Rules provided that no suit no suit could be defeated for reasons of non-joinder of any party. He relied on the Order 1 Rule 9 of the Civil Procedure Rules (CPR) for this submission.

It was further submitted by counsel for the Appellant that court had the power to order the addition of any party to be joined to a suit whether as a plaintiff or defendant if their presence is required by the court in order to enable the court efficiently adjudicate and settle a matter. In this regarded counsel relied on the case of **Caroline Turyatemba and others v Attorney General & anor** Constitutional Petition No. 16 of 2016. In that case, the court did not strike out or dismiss the suit but rather proceeded to adjudicate the matter.

Respondent's submissions

Counsel for the first to third Respondent submitted that the failure to join the Attorney General and other beneficiaries of the compromise as parties to the suit rendered it incompetent.

He referred us to the case of **S.P. Gupta v Union of India** AIR 182 SC 149 cited in the East African Court of Justice decision of **East Africa Law Society and 4 ORS v AG of the Republic of Kenya** Application No.9 of 2007 for the preposition that a person whose rights has suffered injury of his legal right or legally protected interest has locus standi in such an action. He submitted that his clients had the right to contest the preliminary objection as parties to the suit.

Counsel for the fourth to eighth Respondent also submitted that that the trial Judge was correct to find that the suit was incompetent for failure to join the Attorney General as a necessary party to the suit. This was because the rights of government and over 1500 beneficiaries who were parties to the consent Judgment could be adversely affected if not heard.

He therefore submitted that the ground was misconceived and untenable.

Court's Findings

The complaint in this ground is that the trial Judge was wrong to uphold the preliminary objection that the Appellants ought to have added the Attorney General and other beneficiaries of the compromise as a parties to the suit. Counsel for the Appellant submitted that court had the power to order any party to join the suit in accordance with Order 1 Rule 9 of the Civil Procedure Rules (CPR). On the other hand counsel for the Respondent submitted that Attorney General and other people had been a parties to the compromise albeit in another suit altogether and thus they ought to have been parties to this suit; so as to be heard.

The law on preliminary objections is well settled and the legal position is that a preliminary objection should be raised on a point of law based on facts which are not in dispute. In the East African Court of Appeal case of **Mukisa Biscuits**

Manufacturing Co Ltd v West End distributors Ltd [1969] EA 676 at 700 **Law** (JA) held:

"So far as I am aware, preliminary objections consist of a point of law which has been pleaded or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit. Examples are limitation, or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration..."

Then at 701 Sir Charles Newbold (P) added;

"...A preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion..."

First I find that the issues that were raised were all points of law that could be determined by the court and therefore the court was right to hear and determine them since they were not issues involving facts which are in controversy or in dispute.

But before dealing with the various grounds and issues raised in this Appeal, it is important to re-evaluate the factual evidence involved to put this Appeal into some context. The Appellants (10) and the fifth to eighth Respondents (8) are all former workers of UEB. During the privatization and reorganization of UEB, the said parties mentioned above and many more other staff, had their employment terminated and their services transferred to new entities known as UEDCL and UETCL. The said termination triggered the need for the staff of the defunct UEB to have their terminal benefits paid. For some reason the payments of the terminal benefits delayed and so the staff decided to take legal action. This led staff of the

defunct UEB to file law suits to press for payments of their terminal dues. There were four ordinary suits in number (not including the numerous interlocutory applications that were also heard). The first suit was filed in 2005:

HCCS No. 967 of 2005: **Walugo John V UEB**.

Under MA No. 642 of 2005 leave to file a representative suit had been granted by court on the 28th day of October, 2005.

The second suit was filed in 2006:

HCCS No. 760 of 2006: **Josephine Nakafeero V UEB.**

Under MA No. 156 of 2005 leave to file a representative suit had been granted by court on the 30th day of August, 2006.

The Third Suit was filed in 2005:

HCCS No. 719 of 2005: **Paul Nyamerere V UEB**.

Under MA No. 92 of 2005 leave to file a representative suit had been granted by court on the 5th day of July, 2005.

I shall address the fourth suit later in this Judgment.

All these suits were filed by and the representative orders obtained by the same law firm namely M/s Bashasha & Co Advocates (Respondent No. four and specifically Alex Bashasha Advocate). It is not clear to my mind what strategy the advocates in this matter had in filing all these suits, but evidently the result was a multiplicity of suits on the same subject matter entered the court system. However the above fact notwithstanding, a look at an affidavit of Henry Kyambadde (sixth Respondent) in HCMA 259 of 2015 in paragraph 3 (page 426 of the Record of Appeal) may provide more light in all this and states:

"...That I with the 1st (John Walugo) and the 3rd (Josephine Nakafeero) Applicants filed representative suits on behalf of and with authority of about 1,500 former

employees of Uganda Electricity Board...for the recovery of terminal benefits, general damages, NSSF entitlements, interest and costs..." (Additions mine see also similar averments by John Walugo in the same matter at page 442 of the Record of Appeal).

It would appear that HCCS No. 719 of 2005 (for Paul Nyamerere) was successful and indeed some of the claims especially for general damages were paid. Paul Nyamerere then filed HCMA No 290 of 2007 seeking consequential orders for payment of pension, and gratuity for the same employees. It was during this application that UEB raised a preliminary objection UEB no longer existed by virtue of the liquidation under the Uganda Electricity Act of 1999 and Public Enterprise Reform and Divestiture (PERD) Act of 2006. The trial Judge up held the objection and reversed her decision in HCCS No. 719 of 2005. On Appeal to the Court of Appeal in Civil Appeal No. 55 of 2008 (see page 289 Record of Appeal), this Court on the 31st August 2009 allowed the appeal and Ordered HCMA No. 290 of 2007 to proceed to conclusion as a matter of urgency. To my mind this appeared to resolve the outstanding dispute since there was already Judgement in favour of the former staff of UEB in HCCS No. 719 of 2005. In the meanwhile a fourth suit had been filed by Paul Nyamerere in 2008 by the same law firm:

HCCS No. 138 of 2008: **Paul Nyamerere and Kyambadde Henry V UEDCL & ors**

This further suit was also seeking the same reliefs as all the others adding to a further proliferation of cases on the same matter. In a bid to tidy this up and close HCMA No. 290 of 2007 a Consent Order was entered into on the 27th October, 2009 (page 572 of the Record of Appeal) between Paul Nyamerere and UEB which acknowledged both HCCS No. 719 of 2005 and HCCS No. 138 of 2008 whereby the

outstanding dues to the former staff of UEB would all be computed in HCCS No. No. 138 of 2008 and then stated that:

"...Upon settlement of the claims in HCCS No. 138 of 2008 the claims in HCCS No. 719 of 2005 and Misc. Appl. No. 290 of 2007 shall ipso facto be deemed settled and the proceedings in the said application shall hence forth be terminated and ***no further proceedings for consequential orders shall be instituted by the plaintiff or the said beneficiaries under the judgment in HCCS No 719 0f 2005...*** *" (Emphasis mine).*

However there were still pending in the trial courts HCCS No. 976 of 2005 and HCCS No. 760 of 2006. Ideally these two other suits should have been withdrawn as they involved representative orders and lawyers who are the same as in the other resolved suits. The parties instead proceeded to file another application HCMA No. 234 of 2012 (arising out of HCCS No. 138 of 2008 at page 572 of the Record of Proceedings) whereby HCCS No. 976 of 2005 and HCCS No. 760 of 2006 were consolidated with HCCS No. 138 of 2008 and judgment on admission entered on the 13th July 2012 against the defendants (being UEDCL UETCL UEB (In Liquidation) and the Attorney General) for the sum of Ug Shs 47,972,421,017/=. It was further agreed that:

"3. All payments arising out of HCCS No. 138 of 2008, HCCS N0. 967 of 2005 and HCCS No. 760 of 2006 be paid through official Receiver/Liquidator Uganda Electricity Board in Liquidation after deducting the lawyer's fees.

4. The Costs of the Judgment on admission shall be met by the defendants in all the consolidated suits..."

One would have expected with all these "twists and turns" that the dispute was "done and dusted" but alas, yet another case was filed from which this appeal arises namely HCCS No. 49 of 2014 introducing a new set of Advocates for the plaintiffs (M/s Byenkya, KihiKa & Co Advocates) which makes it the fifth suit on the same subject matter. The suit from which this Appeal arises in its remedies seeks to set aside and or vary in whole or part the Judgment on admission.

With the above more detailed background I shall now address the grounds in this Appeal.

The trial Judge found (page 49 Record of Appeal) that it was wrong not to have added the Attorney General to the suit. He found that the fifth to eighth Respondents (as defendants in the trial Court and referred to in the plaint as "purported representatives" sic) had been sued in their individual capacity and not as representatives of the 1,500 former staff UEB who were to benefit from the said compromise. It is was therefore clear that the Attorney General who had undertaken to pay the dues of the said 1,500 former staff and the said staff themselves could be condemned unheard if the suit proceeded in that manner. The right to be heard is a fundamental basic right. It is one of the cornerstone of the whole concept of a fair and impartial trial. The principle of "Hear the other side" or in Latin "**Audi Alteram Partem"** is fundamental and far reaching. These are enshrined in Article 28(1) and article 44(c) of the 1995 Constitution. In addition to this Article 126(2)(b) provides that Justice shall not be delayed.

I cannot fault the trial Judge on this finding. To set aside or vary in anyway the compromise in HCCS No. 138 of 2008 would require all the parties therein to be heard. The compromise which would led to the payment of the outstanding

pensions was hard fought for, using representative actions and one cannot in my view subsequently ride on those gains and narrow them to individual actions. That being my finding I answer this issue in the negative.

Ground 2: That the trial Judge erred in law in finding that the suit was barred by Res Judicata.

Appellants Submissions

Counsel for the Appellant submitted that the trial Judge did not properly address his mind to the contents of the plaint and thus did not understand the nature of the claim before him. He argued that the trial Judge assumed that the suit was a claim for terminal benefits against the Respondents whereas this was not the case.

He argued that according to the plaint it was a suit to set aside a post Judgment compromise order entered into by a number of the parties on the basis that the said compromise was tainted with illegality, against public policy and had been obtained by way of undue influence and fraud.

Secondly, he submitted that the second cause of action was to set aside a consent taxation order in respect to alleged client/ Advocate costs on the basis that it was entered into under circumstances of illegality, deceit, undue influence collusion and fraud.

Counsel for the Appellant also submitted that the orders sought differed from the ones in the earlier suit that was a claim for unpaid terminal benefits arising from previous employment by the parties represented with Uganda Electricity Board.

It was submitted by counsel for the Appellant that the parties involved in this suit were also different from the parties in the earlier suit because in suit there was a

new defendant Alex Bashasha and Co. Advocates who was being accused of getting the fifth to eighth Respondents to execute both the compromise and the consent taxation order under circumstances of collusion and undue influence.

Counsel for the Appellant faulted the trial Judge for failing to appreciate the wealth of authorities that have established the principle that courts will entertain a fresh suit to set aside a consent Judgment on any grounds that would be capable of setting aside a contract. In this regard, he cited to us the case of **Attorney General v James Mark Kamoga and others** Civil Appeal no.8 of 2004 (SC).

Respondent's submissions

Counsel for the first to third Respondents submitted that the Appellants in HCCS No.49 of 2014 sought to exclude the payment of plaintiffs' terminal benefits after deducting the lawyers' fees the very subject in HCMA 234 OF 2012 which was deliberated upon and determined by court and as such making the issue in this suit res judicata and untenable.

He submitted that **S.7 of the Civil Procedure Act** and the case of **National Council for Higher Education v Anifa Kawooya Bangirana Constitutional Petition No. 4 of 2011** provided that court should not entertain a matter which has already been decided by a court of competent jurisdiction. He concluded by stating that the trial Judge was correct to make the finding that the matter was res judicata.

Court's findings

The issue under contention in this ground is whether the suit of HCCS No.49 of 2011 was Res judicata. Counsel for the Appellant has submitted that suits that the two different causes of action and different parties. While counsel for the

Respondent submitted that the prayers sought in Civil Suit No.49 of 2012 were similar to those in HCMA No. 234 of 2012.

Section 7 of the Civil Procedure Act provides that;

"No court shall try any suit or issue any suit or issue in which the matter directly or substantially in issue has been directly and substantially in issue in a former suit between the same parties or between parties under whom they or any of their claim litigating under the same title in a court competent to try such subsequently raised and has been heard and finally decided by such court."

Three situations appear to be essential for the doctrine to apply; One, the matter must be directly and substantially in issue in the two suits. Two parties must be the same parties or under the same title. Lastly, the matter was finally decide in the previous suit. All the three situations must be available for the doctrine of Res judicata to operate.

The trial Judge found as follows:

"...I am in agreement with learned counsel for the defendants that the claim as indicated in the plaint concerns payment of the plaintiff's terminal benefits after deducting the lawyer's fees and it to be paid. These issues have been substantially heard and determined by this court. By the plaintiffs who have the same claim as those who litigated before bringing this suit on similar facts, offended the doctrine of res judicata..."

Again I can find no basis to fault the trial Judge with this finding. I can only add that the parties themselves undertook in HCMA No. 290 of 2007 that:

"...no further proceedings for consequential orders shall be instituted by the plaintiff or the said beneficiaries under the judgment in HCCS No 719 0f 2005..."

Given the multitude of suits and applications in this matter it easy to forget what the parties themselves undertook to do including ending the litigation which undertaking this court will hold them to. In any case as I have shown before, some payments had already been made by UEDCL UETCL UEB (In Liquidation) and the Attorney General under this settlement.

This being my finding I also answer this issue in the negative.

Ground 3: That the trial Judge erred in fact and law in deciding that the Appellant had no locus standi to file a suit to set aside consent orders.

Appellant's submissions

Counsel for the Appellant submitted that the trial Judge was wrong to find that as long as a representative order was in place, the represented person had no right to challenge any action taken by the representative whether it affected their individual entitlement or not.

Secondly, he submitted that the trial Judge erred when he found that the representative order allowed the court appointed representatives unlimited power to compromise the rights of the represented parties.

Thirdly, he submitted that the trial court was wrong to find that any challenge by an aggrieved represented party against the court appointed representative amounted to abuse of the court process.

Respondents' submissions

Counsel for the first to third Respondents submitted that the High Court was functus Officio because it had entered Judgment in the terms of the compromise

and issued a decree by the same Judge under Order 25 Rule 6 of the Civil Procedure Rules.

Court's findings

When the trial Judge was making the finding on this ground he made the following observation:

"...I will start by quoting the comments of the Court of Appeal of Kenya ***in Cahill and others vs Nandra & others*** *[2006]1 EA 35. It was stated that a representative suit is one which is filed by one or more persons or parties under O.1 Rule 8 of the Civil Procedure Rules on behalf of themselves and others having the same interest. There is no requirement that a person seeking to institute a representative capacity must establish that he had obtained sanction of the persons interested on whose behalf he suit is proposed to be instituted. The object for which O. 1 R 8. Of the Civil Procedure Rules was enacted was to facilitate the decisions of questions which a large body of persons is interested without recourse to the ordinary procedure...its purpose of enabling several parties to come to justice in one action rather than in separate actions..."*

This is by and large is an exposition of the law to which I agree. A representative action is to prevent a proliferation of action in court, which unfortunately is exactly what has happened in this dispute.

The trial court also relied on the authority of **Jasper Mayeku & 198 others vs Attorney General and others** HCMA 618 of 2014 where court held that the fact that the 2nd and 3rd respondents in the case were still the appointed and authorized representatives of the ISO employees, the applicants had no locus standi to challenge what was agreed upon by the their representatives and advocates.

The trial Judge used the same analogy and found that since fifth to eighth Respondents were still the authorized representatives of the plaintiffs then the plaintiffs had no locus standi to the challenge the orders of court.

I agree with this finding of the trial court. If you have a problem with the mandate that you gave your representative in a court action why file a new suit where the same issues under a different court file should be adjudicated afresh? I find that to be an abuse of court process.

The trial Judge referred to an observation made by Zehurikize J in **Bako Abila Catherine & 21 others V Attorney General & Kampala City Council** HMA 0628 of 2009 where it was stated:

"...it has become increasingly common that were numerous plaintiffs successfully sue the Attorney General they tend to split at execution at execution level and splinter groups end up instructing new lawyers for purpose of recovering amounts due to them. This is an abuse of court process for part of the judgment creditors to raise new issues through new lawyers which is intended to perpetuate litigation with attendant costs..."

This observation is very apt for this Appeal. I find that the Appellants are such a splinter group, which are now trying to deny the representative orders or instructions they gave the fifth to eighth Respondents to sue on their behalf to be paid their benefits. A clear example of this is the second and seventh Applicants who filed HCMA 167 of 2011 (under HCCS No. 138 of 2008 using yet another set of lawyers M/s Lex Advocates page 811-818 Record of Appeal) where they accepted in the supporting affidavit that they authorised Kyambadde and Nyamerere to hire the law firm of M/s Bashasha & Co Advocates to prosecute the

case on their behalf, which instructions they are now throwing in doubt in the pleadings as plaintiffs in trial court.

These being I findings I answer this ground in the negative.

Ground 4: That the trial Judge erred in fact and in law when he decided that the suit filed in the High Court to be set aside consent orders was before a wrong forum

Appellant's submissions

Counsel for the Appellant submitted that the trial Court was wrong to find that to challenge to the consent taxation order or compromise orders could only be by way of an Appeal to the Court of Appeal and that the law did not envisage any post Judgment remedies in the same court.

Respondent's submissions

Counsel for the Respondent submitted that that the suit filed by the Appellants was in fact an Appeal disguised as a suit. He argued that the procedure of filling an Appeal was by way of a Notice of Appeal under Rule 76 of the Court of Appeal Rules and not by ordinary plaint.

Counsel for the Respondent submitted that once a compromise of consent is entered and endorsed by the court the same becomes an order or a decree and can be executed as such. He argued that therefore if the decree or order is to be challenged, it is through lodging the Appeal.

He argued that the case of **Ladok Abdullah Mohammed Hussein v Griffiths Isingoma Kaakiza** CA No. 8 of 1995 did not give liberty to choose whichever procedure a party may wishes to use.

Court's findings

The trial Judge found that once a compromise or consent is entered and the court endorses the same, it becomes an effective court order or decree. The court found that although these compromises are treated as agreements they are in actual sense not mere agreements but Orders of Court. The Trial Judge (page 63 Record of Appeal) went on to find:

"...They are orders of court and can be executed as such. Therefore if they are challenged, the procedure through which they can be challenged is laid down in the law...it would be highly irregular and improper for this court to quash its own previous judgement in the way the plaintiffs suggest. It would have the effect of this court sitting on appeal in its own decision. I also agree that this court became functus officio once it endorsed the consent agreements and passed the decree and order..."

I generally agree with the finding of the trial Judge even though I would add that a consent Judgement could be set aside under an existing suit on proof of fraud, undue influence deceit, collusion and illegality.

The trial Judge then offered the correct procedure that the parties may use if such orders are to be challenged (page 64 Record of Appeal) and found:

"...one can appeal to the Court of Appeal under S. 66 of the Civil Procedure Act or one can seek a review of the decision under S. 82 of the Civil Procedure Act in the same court but not by filing a fresh suit..."

Once again I cannot fault the trial Court's findings on this ground. Indeed Section 33 of the Judicature Act supports such an approach as stated by the trial Judge and 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..."

I have carefully studied the Record of Appeal and it appears to me that the matter in controversy and heart of the proliferation of suits is the remuneration of the Advocates and in particular M/s Bashasha & Co Advocates. It must be recalled that Under HCMA No. 234 of 2012 (page 574 of the Record of Appeal) paragraph 4 provides that the costs shall be paid by the defendants there in namely UEDCL UETCL UEB (In Liquidation) and the Attorney General. This undertaking is also found in what is referred to as the Compromise (page 776 and especially at page 781 to 782 of the Record of Appeal). The Consent Decree (page 576 of the Record of Appeal) paragraph 2, 3 and 4 provides the mechanism under which the costs will be taxed in court and paid by the said defendants. It is not clear from the Record of Appeal whether the said costs were taxed even though strangely there is an untaxed application for taxation of an Advocate-Client Bill of costs is on record for the sum of Ug shs 8,418,204,974 (HCMA No. 126 of 2012 at page 819 if the Record of Appeal). In application HCMA No. 167 of 2011 there could be an undisclosed remuneration agreement with the law firm M/s Bashasha & Co Advocates which may have caused the Appellants as a splinter group to raise up against the settlement in this dispute; given that the defendants in the consolidated suits at the trial Court had undertaken to pay the costs. This could be what is not clearly pleaded in HCCS 49 of 2014 (as no remuneration agreement is pleaded) even though the reliefs sought refer to attaching the Appellant's

pension and gratuity for which I can find no nexus with the various settlement agreements/orders evaluated before. This to my mind answers the fear that after a hard fight for their benefits part of it would be attached to pay for their legal fees. If such a remuneration agreement exists it should have been specifically pleaded and dealt with under the previous consolidated suits as advised by the trial Judge.

All in all I that the trial Judge was correct to make the finding that he did under this ground.

Ground 5: That the trial Judge erred in fact and in law in deciding that HCCS NO.49 of 2014 was filed using wrong procedure.

I find that this ground is similar to ground four which I have already resolved. I accordingly answer this ground in the negative.

Final Result

The above being my findings I dismiss this Appeal with costs to the Respondents.

Dated at Kampala this 20th day July 2020

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HON. MR. JUSTICE GEOFFREY KIRYABWIRE, JA

THE REPUBLIC OF UGANDA

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CIVIL APPEAL NO. 28 OF 2017

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(Appeal from the decision of the High Court at Kampala before His Lordship Justice Stephen Musota dated the 27th October 2016 in HCCS No 49 of 2014.)

CORAM: **Hon. Mr. Justice Kenneth Kakuru, JA**
Hon. Mr. Justice Geoffrey Kiryabwire, JA
Hon. Mr. Justice Christopher Madrama, JA

JUDGMENT OF JUSTICE KENNETH KAKURU, JA

I have had the benefit of reading in draft the judgment of my learned brother Kiryabwire, JA.

I agree with him that this appeal ought to be dismissed with costs to the respondents, for the reasons he has ably set out in his judgment.

As Madrama, JA also agrees, this appeal stands dismissed with costs here and the Court below.

It is so ordered.

Dated at **Kampala** this 20th day of July 2020.

.....

Kenneth Kakuru

JUSTICE OF APPEAL

THE REPUBLIC OF UGANDA,

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

CIVIL APPEAL NO 28 OF 2017

(CORAM: KAKURU, KIRYABWIRE, MADRAMA JJA)

1. DISON OKUMU}
2. EDWARD UDHEC RUBANGA}
3. JOSEPH HENRY NDAWULA}
4. JAMES NANTALE}
5. STEPHEN MUKASA}
6. FREDERICK JOHN MUBIRU}
7. JOSEPH MUTATINA}
8. OYELLA ROSE EVE OPIRO}
9. MARY WACHA}
10. STEPHEN EPILU} .....APPELLANTS

VERSUS

1. UGANDA ELECTRICITY TRANSMISSION COMPANY}
2. UGANDA ELECTRICITY DISTRIBUTION COMPANY}
3. UGANDA ELECTRICITY BOARD (IN LIQUIDATION)}
4. ALEX BASHASHA T/A BASHASHA & CO. ADVOCATES}
5. POUL NYAMARERE}
6. HENRY KYAMBADDE}
7. JOHN WALUGO}
8. JOSEPHINE NAKAFERO} .....RESPONDENTS

JUDGMENT OF CHRISTOPHER MADRAMA IZAMA, JA

I have had the benefit of reading in draft the judgment of my learned brother Hon. Kiryabwire, JA and I agree with his analysis of the facts and the law.

I concur with decision that the appeal be dismissed for the reasons he has stated in his judgment and have nothing useful to add.

Dated at Kampala the 20th day of July 2020

Christopher Madrama Izama

Justice of Appeal