

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**(COMEMRCIAL DIVISION)**

**CIVIL SUIT NO. 1488 OF 2000**

**REMMY KASULE ::: PLAINTIFF**  
**VERSUS**

**1. CHARLES HARRY TWAGIRA}**  
**2. OILSEEDS (U) LIMITED} ::: DEFENDANTS**

**BEFORE: THE HON. MR. JUSTICE R.O. OKUMU WENGL.**

**RULING:**

After holding of a scheduling conference but before the hearing of this case could begin in earnest, the Defendants put up a preliminary objection to the suit. It is contended that the plaint as filed does not disclose a cause of action and should be struck out. The main grounds are that the Plaintiff was merely a beneficiary and privy to the court settlement between the Uganda Development Bank and the Oil Seeds Limited. He was the Arbitrator. To this extent, the consent agreement was binding and enforceable as against the Oil Seeds once the Bank had paid over the money. The issue of whether this being the case the Plaintiff can enforce the payment and squeeze it out of the Oil seeds or its Director Mr. Charles Twagira, who is the 2 Defendant. This is the argument of the Defendant’s counsel that he cannot be not privy to the executed and performed contract. There are more complexities in the fees payable to the arbitrator which the Defendants raised.

For the Oil Seeds Director, it is argued that he could not be held in conversion as the tort relates to goods and not money. Further that he was also not party to the consent judgment between his company and the Bank that yielded the missing money claimed by the Plaintiff.

The Plaintiff has argued it reply that he claims breach of contract, breach of trust and negligence. I have read the pleadings as well as submissions of counsel on this matter. This case indeed

raises many complexities for the parties, the advocates and the trial courts. I for one would rather leave the matter to proceed to trial after the trial court can frame issues for trial. I would tend to believe that the consent agreement between the Bank and Oil Seeds was partly performed and the issue of privity between the two was exhausted and that is why the Uganda Development Bank is not a party to this suit. But whether the arbitrator is entitled to this money either in addition to what he already had received or at all, this is a question of evidence. The nature of arbitration is like in other adjudication process triadic and fees payable to the arbitrator does not arise in essence strictly out of privity. The party or parties if both are to pay the arbitrator are bound to pay and this can be enforced. What I am not familiar if whether there would be a simpler way, like in the case of recovery of costs and advocates fees, that arbitrator can follow to recover their honoraria. Neither counsel has addressed this for obvious reasons of adversarial litigation. For my part I will suggest that the Plaintiff has alleged a right, which right has not been harvested and he holds the two Defendants liable in contract, trust and negligence.

I think this dispute if not controversy presents a semblance of a cause of action by an arbitrator to recover his fees. If the fees are not part of the (U) Shs. 200 million, plus this is a matter of evidence. I would therefore say that the preliminary objection is disallowed and the matter can be placed before the Commercial Judge for further proceedings with a direction to the Commercial Registrar to render this ruling to both parties on a date he will communicate to them.

**JUDGE**

**10/11/2003.**