

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
[COMMERCIAL DIVISION]

HCT-00-CC-MA-0298 -2005

[Arising from HCT-00-CC-CS-286-2005]

BRITISH AMERICAN TOBACCO UGANDA LTD

APPLICANT

Versus

1.SEDRACH MWIJAKUBI
2.MUKITALE ASIIMWE
3.JOSHUA BYANGIRE
4.FENAKANSI BYABESIZA
5.SOLOMON KIIZA

RESPONDENTS

BEFORE HONOURABLE MR. JUSTICE FMS EGONDA-NTENDE

RULING

1. The Applicant seeks in this application to strike out the head suit filed by the respondents. In the alternative the applicant seeks an order declaring the respondents as representing nobody as plaintiffs in this suit. The applicant further seeks costs of the head suit from the respondents. This application is made under Section 98 of the Civil Procedure Act. It is supported by an affidavit of a one Albert Byamugisha.
2. Two grounds are advanced in support of this application. Firstly, it is contended that no permission was sought by the respondents or granted by the court for the plaintiffs to sue on behalf of the persons who appear on annexure 'B' to the plaint. Secondly that the court did not give and has not published notice of the institution of the suit to the said persons either by personal service or public advertisement.
3. This application is opposed by the respondents. An affidavit sworn by Mr. Mulema Mukasa, an Advocate, was filed in support of the respondents' position. The affidavit

provides ample proof of both the permission of the court granted to the respondents to bring this action in a representative capacity and the publication by the court of the notice to the persons on whose behalf this suit was brought in the Monitor Newspaper of 30th March 2005.

4. Dr. Byamugisha, learned counsel for the applicant, submitted that this suit was brought in contravention of Order 1 Rule 8 of the Civil Procedure Rules since court had granted permission for an action to be brought on behalf of 2500 people and the list published had 2838 people. Mr. Muwema, learned counsel for the respondents, submitted that the discrepancy in figures did not contravene any provisions of the law. The basis of the permission is not the exact number of the group of persons on whose behalf the action is brought but the common interest between all of them.
5. Representative actions are instituted to avoid a multiplicity of legal proceedings over the same subject matter where there are numerous individuals having interest in the same subject matter. The community or group on who behalf the action is brought does not have to be ascertained by exact figures as it is possible to bring an action on behalf of a fluctuating group or community of individuals as Mr. Muwema pointed out. The discrepancy in the figures given in the court order and in the notice published in the media is not fatal to the representative action.
6. I am satisfied that this application is without merit. It is dismissed accordingly with costs to the respondents.

Dated at Kampala this 4th day of May 2005

FMS Egonda-Ntende
Judge