

Last Updated: 12 July 2007

Standard Chartered Bank Uganda Ltd V Gapco Uganda Ltd & Anor-HCT-00-CC-MA-0049-2007  
[2007] 25 April 2007

**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA**

**COMMERCIAL COURT DIVISION**

HCT-00-CC-MA-0049-2007

(Arising from HCT-00-CC-CS-777-2006)

Standard Chartered Bank Uganda Ltd Applicant

Versus

Gapco Uganda Ltd Claimant No.1  
Barclays Bank PLC Claimant No.2

**25 April 2007**

**BEFORE: THE HONOURABLE MR. JUSTICE FMS EGONDA-NTENDE**

**RULING:**

1. The applicant is the defendant in the main suit. As a result of an agreement in the main suit the applicant received a sum of US\$1,999,950.00 by way of SWIFT transfer from Gapco Tanzania Ltd. Gapco Tanzania Ltd is embroiled in legal proceedings in Tanzania with a syndicate of banks represented by Barclays Bank PLC, hereinafter referred to Claimant No.2, as a result of being placed under receivership by claimant No.2. Claimant No.2 lays claim to this sum. Gapco Uganda Ltd, hereinafter referred to as claimant No.1, contests the position pressed by claimant No.2 on the applicant. The applicant has come to this court, by way of motion on notice, beseeching this court to authorise interpleader proceedings to determine the ownership of the said monies.

2. This application is brought under Order 34 rule 1(b) of the Civil Procedure Rules. It is supported by 2 affidavits sworn by Mr. Richard Ssuna, an officer of the applicant bank. Claimant No.1 opposes the application, arguing it cannot be maintained, under the provisions of the law it has been made. And as this point has the potential of disposing of this application I will take it first.

3. Mr. F E Ssempebwa, learned counsel for the claimant No.1, submitted that the primary provisions of the law that govern proceedings of this are found in Section 59 of the Civil Procedure Act. He submitted that the sum of US\$1,999,950.00 in the hands of the applicant, to which the claimants lay claim, is not part of the subject matter of the main suit. For the present proceedings to properly arise by motion, Section 59 requires that the main suit must be dealing with the same subject matter as the sum claimed by

the claimants.

4. Secondly Mr. Ssempebwa submitted that in terms of Order 34 Rule 2 of the Civil Procedure Rules this applicant has an interest in the money in question, and as a result does not satisfy the necessary prerequisites to commence these proceedings.

5. Mr. E Byenkya, learned counsel for the applicant, responded that Mr. Ssempebwa was pressing upon the court, a rather narrow interpretation of the provisions of Section 59 of the Civil Procedure Act. In his view, an expansive view of those provisions should find that the money now claimed is part of the subject matter of the main suit. Secondly he submitted that the applicant has no interest in this money, and thus fulfilling this and other conditions of Order 34 Rule 1(b) of the Civil Procedure Rules, this court ought to proceed and determine the ownership of the money in question.

6. Section 59 of the Civil Procedure Act, must be brought in view at the outset of my discussion. It provides,

‘Where two or more persons claim adversely to one another the same debt, sum of money or other property, moveable or immovable, from another person, who claims no interest in it other than for charges or costs and who is ready to pay or deliver it to the rightful claimant, that other person may institute a suit of interpleader against all the claimants or, **where a suit dealing with the same subject matter is pending may intervene by motion on notice in such suit**, for the purpose of obtaining a decision as to the person to whom payment or delivery shall be made, and of obtaining indemnity for himself or herself; except that where any suit is pending in which the rights of all parties can be properly decided, so such suit of interpleader shall be instituted.’ (*Emphasis is mine.*)

7. Order 34 of the Civil Procedure Rules details the rules of procedure in relation to interpleader suits or proceedings. These rules are not looked at independently. The rules must be viewed in light of and applied consistently with Section 59 of the Civil Procedure Act, which is the parent statute. Order 34 Rule 1(b) of the Civil Procedure Rules, provides that interpleader proceedings may be instituted in case of a pending suit, by motion on notice in that action. It is the rule under which this application is made. Order 34 Rule 2 then sets out the prerequisites that an applicant must prove and these are, ‘(a) that the applicant claims no interest in the subject matter in dispute other than for charges or costs; (b) that there is no collusion between the applicant and any of the claimants; and (c) that the applicant is willing to pay or transfer the subject matter into court or to dispose of it as the court may direct.’

8. The subject matter of the head suit is found in the plaint, the only pleading in the head suit filed at this stage. It revolves around loan facilities granted to the claimant No.1. Claimant No.1 is the plaintiff and the applicant is defendant in that suit. The suit seeks a permanent injunction against the applicant from recalling the loan facilities in question granted to the claimant No.1, and or taking possession of the applicant’s properties or appointing a receiver thereof. The plaintiff further seeks several declarations with regard to the loan facilities so granted and general damages.

9. From the affidavit of the claimant No.1, (the plaintiff in the head suit), it is disclosed that there was an attempt to settle that suit, and in pursuance of that agreement to settle, claimant No.1 promised to make certain payments to the applicant within certain time periods. That agreement was never filed in court. The sum in question came into the hands of the applicant, not in course of the ordinary bank/customer relationship alone, but it purported to be payment to settle certain liabilities between the claimant No.1 and the applicant. The payment is from Gapco Tanzania Ltd.

10. It would appear to me that the question of ownership of the said sum of

US\$1,999,950.00, in question in the instant proceeding, is not really part of the subject matter in the head suit, but enters the picture only as forming part payment of the claimant No.1's obligations to the applicant. Resolving issues in the head suit would not resolve the issue of ownership of the said sum of US\$1,999,950.00, which is an issue between Gapco Tanzania Ltd/Gapco Uganda Ltd and Barclays Bank PLC, arising from different sets of transactions as deponed by both claimants in this proceeding.

11. Section 59 of the Civil Procedure Act, requires an existing suit to be dealing with the same subject matter as the subject matter in the intended interpleader proceeding, so as to allow an applicant, commence interpleader proceedings by way of notice of motion in the existing suit. Clearly, in my view, the subject of the head suit, and the subject matter of the interpleader proceeding sought to be initiated are clearly different subject matter, arising from different transactions between, the claimants herein and Gapco Tanzania Ltd.

12. Gapco Uganda Ltd claims to have supplied certain products to Gapco Tanzania Ltd which in turn effected payment of US\$1,999,950.00, to the applicant on account of Gapco Uganda Ltd, as consideration for the products so supplied to Gapco Uganda Ltd. Claimant No.2 contends that Gapco Tanzania Ltd, at the time under receivership, wrongfully engaged in acts amounting to dissipation of its property, which the claimant No.2 is entitled to trace, and recover.

13. *Sargent v Gautama* [1968] EA 338 was referred to me. This case illustrates an appropriate case for interpleader proceedings. In that the case the subject matter of the suit was a sum of [sterling]5,000.00 paid to advocate of one of the parties, as part of a settlement. A dispute arose over that settlement, and the sum was never paid out as initially agreed. An action was commenced to recover this sum from the advocate to whom it had been paid. Several people contended for the same. He then took out interpleader proceedings to determine who was entitled to the same. In the Court of Appeal for East Africa, it was found, reaffirming the decision of the High Court of Kenya, that this was a proper case for institution of interpleader proceedings. The facts of that case do illustrate situations where the subject matter of the main suit is the subject matter of the intended interpleader proceedings, which is not the case before me.

14. As the subject matter of the interpleader proceeding is not the same as the subject matter of the existing head suit, interpleader proceedings cannot be commenced as the applicant has done. On this ground alone this application should fail. I dismiss the same with costs to claimant No.1.

15. Secondly, the applicant received the funds in question, not because of its ordinary bank/customer relationship with the claimant No.1. Had the said funds been paid in respect of that relationship, it would be accurate for the applicant to claim to have no interest in the amount, save for costs or charges ordinarily charged for such transactions.

16. The funds in question were received by the applicant as part payment of the claimant No.1's obligations to the applicant. To that extent the applicant has an interest in the said funds, though such interest could be defeated by superior interests in the said sum, now being asserted by claimant No.2. It is simply not enough for the applicant to aver that it has no interest, when in fact, when it was receiving the money; it was under the impression that the payment was a payment by Gapco Uganda Ltd, settling its indebtedness to the applicant. The applicant had some interest therefore in the said sum.

17. Section 59 of the Civil Procedure Act imposes a substantive qualification in respect of actions of this nature which is repeated in Order 34 Rule 2 of the Civil Procedure Rules, and that is that the applicant has to have no claim of interest in the said sum of money or property. As clearly the applicant here has some sort of interest in this sum, to that extent, this application would have failed on this ground as well.