



the questions involved in the course of the matter. I construe the Supreme Court decision in **DAPCB –Vs- Jaffer Brothers Ltd SCCA No. 9 of 1998** in that context.

The principles on which such application can be allowed were, in my view, well articulated in **Coffee Works (Mugambi) Ltd –Vs- Kayemba HCCS No. 505 of 1963 (M.B. 56/64)**. In that case the plaintiff claimed a certain sum of money from the defendant being money had and received. The defendant by his own Written Statement of Defence claimed that he had over paid the sum in question to the person whom he sought to add as a co-defendant. Sheridan, J. held that:

- (i) the plaintiff was entitled to choose the person against whom he wished to proceed and leave out any person against whom he did not wish to proceed.
- (ii) there is no jurisdiction under the rule to order the addition of parties as defendants where the matter was not liable to be defeated by non-joinder; when they were not persons who ought to have been sued in the first instance; and where their presence was not necessary to enable the Court effectively to adjudicate on all questions involved.
- (iii) the defendant would not generally be added against the plaintiff's wish.
- (iv) Third Party notice in such a case was usually the proper course.

In the instant case, the plaintiff's case against the defendant is based on an alleged contract. It is for breach of the said contract. The plaintiff is said to have agreed to buy a stated amount of cement from the defendant and the defendant is said to have agreed to sell the same to the plaintiff. After partial performance, the deal went bad. Except for the investigations said to have been launched by URA regarding alleged mis-application of the contract cement, it was all entirely a matter between the plaintiff and the defendant. In my view, to effectually and completely adjudicate upon and settle the question of the alleged breach and the parties obligations under the contract, this Court would not require URA's presence before it as a party. Its presence as a witness for either party would suffice. The matter as I see it is not liable to be defeated by non-joinder of URA. If anything, from the pleadings, URA is a complete stranger to the contract. The plaintiff has chosen to proceed against the party it thinks has wronged it. So it shall be. The defendant can take out Third Party notice proceedings against the intended co-defendant, if they think that the circumstances warrant it. Otherwise I see the defendant's application as a move to further delay the determination of a dispute grounded as it were on a contract to which URA is a stranger in terms of privity.

For the reasons stated above, I would disallow the application. I would order that the suit be determined on the merits between the plaintiff and the defendant as parties to the impugned contract. I notice that a scheduling conference is already set for the 28<sup>th</sup> of August 2007. So it shall be. Costs shall abide the outcome of the suit. I so order.

Yorokamu Bamwine

**J U D G E**

22/06/2007

**Order:** This ruling shall be delivered by the Registrar on my behalf on the due date.

Yorokamu Bamwine

**J U D G E**

22/06/2007