

THE REPUBLIC OF UGANDA

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

HCT-00-CC-MA-0409 OF 2007

(Arising from HCT-00-CC-CS- 0246 of 2007)

DYNASITY AFRICA LIMITED.....APPLICANT

VERSUS

MOSES MUGABI AND OTHERSRESPONDENT

BEFORE: HON. MR. JUSTICE LAMECK N. MUKASA

RULING: 2

When Miscellaneous application No. 409 of 2007 was called for hearing one of the Respondents Mr. Muhwezi who is an Advocate, applied that Mr. Charles Dalton Oponya, Counsel for the Applicant, be disqualified from the conduct of the Applicants case. The reasons for the application were basically that the application was supported by an affidavit sworn by Nasser Sekandi in some instances based on information supplied by Mr. Oponya. It was argued that Mr. Oponya was a potential witness intended to be called and cross-examined on information provided to the said Nasser Sekandi.

In my ruling delivered on 12th November 2007 I rejected the application and dismissed it with costs. Mr. Muhwezi immediately orally applied for leave to appeal to the Court of Appeal against the ruling.

The governing principle in such applications is that if the applicant has raised arguable grounds of appeal and there are serious matters which merit consideration on appeal, and is not guilty of dilatory conduct the Court shall exercise its discretion and grant the applicant leave to appeal.

See *The Commissioner General Uganda Revenue Authority Vs Meera Investments Ltd H.C. Misc. App No 359 of 2006, Sango Bay Estates Ltd Vs Dresdmer Bank (1971) EA 17*

Mr. Muhwezi argued that it was necessary for a higher court to decide on the issue whether a Counsel representing a party in an application based on an affidavit based substantially on information supplied by that counsel, is not a potential witness. I have on many occasions come across applications supported by affidavits base on information obtained by the deponents from the party's counsel. I therefore find that Mr. Muhwezi has raised a serious point which is appropriate for guidance by an Appellate Court.

The application is accordingly allowed. Leave is hereby granted to Mr. Muhwezi to appeal against the ruling delivered on 12th November 2007. The Order as to costs in the intended appeal shall bind the costs of this application.

Hon, Mr. Justice Lameck N. Mukasa

Judge

7/12/2007