

THE REPUBLIC OF UGANDA

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

**HCT-00-CC-MA-0507 -2009
(Arising out of HCT-00-CC-CS-040-2008)**

Betuco (U) Ltd and AnorApplicants

Versus

Barclays Bank (U) Ltd & AnorRespondents

Before: Hon Mr. Justice Lameck N. Mukasa

Ruling

The Applicants, Ms Betuco (U) Limited and Ms J and M Airport Road Hotel/ Apartments and Leisure Centre Limited filed this application by way of Notice of Motion under Order 44 rule 1 (2) of the Civil Procedure Rules and Rule 39 (2) (a) Court of Appeal Rules seeking orders that:-

- (a) Leave to appeal against the order of the High Court in Misc.Application No 243 of 2009 be granted.
- (b) Costs of the Application be provided for.

The grounds of the Application are:-

1. The Applicants have filed a Notice of Appeal against the said Order and Ruling.
2. There is a serious question of law to be considered in the said Appeal.
3. It is in the interest of Justice that leave to appeal be granted.

The application is supported by an affidavit sworn by Joseph Bahakanira, the Managing Director of the Applicants. In paragraph 4 he states:-

“4 THAT the applicants intend to raise the following question of law for consideration by the Appellant Court.

- (a) Whether the ostensible authority of an Advocate extends to cases where he does not have specific instructions on a matter regarding compromise.
- (b) Whether mediation proceedings which result into a consent contrary to the parties wishes are binding on that party ”

In order to succeed in an application of this nature, the principle is that the application has to show prima facie that there are serious issues of law or fact or both that merit judicial consideration by an appellant court. This principal was set out in the case of Sango Bay Estate Ltd & Others Vs Dresdner Bank AG (1971) EA 17. It has been cited with approval in Charles Sempewo & Others Vs Silver Springs Hotel (1969) Ltd Court of Appeal Civil Application No 103 of 1993 and Combine (U) Ltd Vs AK Detergents (U) Limited S.C.C. Application No 23 of 1994.

In Matayo Okumu Vs Francisco Amendhe & Others (1997) HCB 229 it was held that a substantial question of law (read serious) is involved where the point raised is one of general principle decided for the first time or where the question is one upon which further argument and a decision of the superior court would be to the public advantage.

As regards “whether the ostensible authority of an advocate extends to cases where he does not have specific instruction on a matter regarding compromise,” the consent judgment dated 25th March 2009 in HCCS No 40 of 2008 and the subject of Misc. Application No 243 of 2009 was co-signed on behalf of the Applicants by Mr. and Mrs. Bahakanira, directors of the Applicants and Mr. Blaze Babigumira and Mrs. Murangira joint lawyers for the Applicants. It is settled law that so long as Counsel is acting for a party in a case and his instructions have not been terminated, he has full control over the conduct of the trial and apparent authority to compromise all matters connected with the action. The counsel’s authority was further fortified by the Applicants directors’ who also signed the consent. Corporate entities conduct business through their officers, like directors. Though it is not open to this court to determine whether the intended appeal would succeed or not, in the circumstances I find no merit with that intended ground of appeal.

As to “whether mediation proceedings which result into a consent contrary to the party’s wishes are binding on that party,” I must point out that mediation is a new process in our legal system. Mediation is governed by The Judicature (Commercial Court Division) Mediation Rules, 2007. Thus peculiar only to proceedings before the Commercial Division Court. Under rule 21 thereof all information arising out of the or in connection with the mediation shall be kept confidential. So the wishes of parties to a mediation or matters upon which the parties reach an agreement which is recorded as a consent judgment are not open to the court when considering whether or not to set aside the consent judgment.

In the premises I find that a decision of the Court of Appeal would be to the public advantage and provide guidance on the issue. Accordingly leave is granted to appeal against the ruling in HCT-00-CC-MA-0243-2009. The Order as to costs in the intended appeal shall bind the costs of this application.

I so order.

Hon. Mr. Justice Lameck N. Mukasa

JUDGE

30th October, 2009