

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

HCT - 00 - CC - MA - 571 - 2011
(Arising from Civil Suit No. 275 of 2011)

M/S SIMON TENDO KABENGE ADVOCATES :::::::::::::::::::: APPLICANTS

VERSUS

ATTORNEY GENERAL AND 6 OTHERS :::::::::::::::::::: RESPONDENTS

BEFORE: THE HON. JUSTICE GEOFFREY KIRYABWIRE

R U L I N G:

This ruling arises from a preliminary objection raised by Mr. Kibaya on behalf of his client the 4th and 5th Respondents but generally adopted by other counsel for the Respondents.

He submitted that in Miscellaneous Application No. 324 of 2011 which involves the same Respondents save for the Attorney General and the Red Pepper Publications and that for better management since the ruling in Miscellaneous Application No. 324 of 2011 is due to be delivered then this objection should be consolidated with it as the arguments are the same.

Dr. Akampumuza for the Applicant took the view that the arguments are not entirely the same.

I undertook to review the main submission of counsel for the Respondent with a view to harmonization of the various outcomes in what now appear to be mushrooming applications in HCCS No. 275 of 2011.

I have now read my decisions in Miscellaneous Application No. 324 of 2012 and Miscellaneous Application No. 565 of 2011 which now create a precedent on this application mutandis mutandis. But for clarity like in those applications there are weaknesses in preparation with regard to Applicant's capacity to sue, the recycling of receipts for the affidavit in reply and finally admissibility of the affidavit of the affidavit of Ms. Eva Nalwanga. I hereby adopt my rulings on all those matters in this application save for stating that Ms. Eva Nalwanga's affidavit may only be acceptable in respect of the 7th Respondent only; which is the law firm for which she works.

The court is bending backwards to accommodate the parties regardless these challenges in preparation.

That notwithstanding, I shall address my mind to the summons as filed generally with a view to disposal at this early stage. Summons are determined on the strength of evidence by affidavit.

Without going into the merits of the legal arguments on the allegations of contempt, I shall exercise my powers under Section 98 of the Civil Procedure Act (CPA) to prevent the abuse of the process of the court and issue a caution to all parties to strictly observe the existing court orders. I sense high emotions in this dispute but these should not be allowed to cloud or circumvent the due process of court existing court orders.

When parties file a case in court to resolve a dispute then they should surrender that dispute to court to determine. This matter is now before the Commercial Court Division which has jurisdiction to handle it and pursuant to Section 33 of the Judicature Act to avoid a multiplicity of cases on it. However, there is evidence that this dispute has become busy and is crossing over into a criminal matter as well. If this is true then I re-echo my caution that there is already an existing order against such multiplicity which should be observed unless the order is varied. In the old times the practice was to stay a civil case if a criminal case was instituted to avoid stretching judicial time. The court then relaxed this rule but in this era of case management this in my view is no longer sustainable. Competing over jurisdiction in various courts should be avoided and I discourage it. Parties should be cautions of judicial time and choose their remedies accordingly.

With this caution and directions I over rule all objections and dismiss this summons with no order as to costs. Should this caution not be needed to this court shall legal on any subsequent application and rule accordingly.

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Geoffrey Kiryabwire

JUDGE

Date: 27/08/12

27/08/12

10:18

Ruling read and signed in Court in the presence of;

- Kibaya for 4th and 5th Respondents
- Rutisya for 6th, 7th and 8th Respondents
- Dr. J. Akampumuza for Applicant

In Court

- Applicant
- Rose Emeru – Court Clerk

Court: This ruling is ready and followed from M.A. 565 of 2011 and 342 of 2011 that I read. I did not send out a notice but it is ready should I read it?

Both Counsel: Yes.

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Geoffrey Kiryabwire

JUDGE

Date: 27/08/12