

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

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HCT – 00 – CC – MA - 598 - 2012
(Arising out of HCCS No. 447 of 2012)

10 1. **ISAM FATHALRAHMAN SALIM** }
 2. **M/S SUGAN LTD** } **APPLICANTS**

VERSUS

15 1. **M/S GULF COMMODITIES (U) LTD** }
 2. **MUTHAN ABDULJABBAR MOHAMED KHUDAIR** }
 3. **DUBAI CLICK GENERAL TRADING CO. LTD** }
 4. **DAMCO LOGISTICS (U) LTD** } **RESPONDENTS**
 5. **YOUSIF ALI**

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R U L I N G:

25 This is an application for a temporary injunction stopping the disposal of 287.3 metric tonnes of sugar currently in the possession of the 4th Respondent (Damco Logistics Ltd) with the rest of the Respondents also said to have claims on it.

On the 23rd October 2012 my learned brother Judge made an order in this matter where he states:

30 ***“... That all proceedings and execution relating to the 283 metric tonnes of sugar which are affected by the Interim Order of release issued by the Assistant Registrar in HCCS No. 259 of 2012 at Nakawa High Court be stayed pending any reference by the Assistant Registrar of the application by the Resident Judge Nakawa High Court Circuit and the main application for Temporary Injunction at the Commercial Court before Hon. Justice Geoffrey Kiryabwire ...”***

35 This was because this present case at the Commercial Court Division fell under my docket but I was away, so the Hon. Judge as Acting Head of Station stayed all proceedings pending my return.

40 Clearly the sugar which is the subject of this application is also the subject of MA No. 423 of 2012 and HCCS No. 259 of 2012 at Nakawa High Court. In other words, there are two (probably more) suits in the Court system relating to this sugar. Section 33 of the Judicature Act deals with this type of situation and provides:

5 ***“ The High Court shall, in the exercise of the jurisdiction vested in it by the Constitution, this Act or any written law, grant or on such terms and conditions as it thinks just, all such remedies as the parties to a cause or matter is entitled to in respect if any legal or equitable claim properly before it, so that as far as possible all matter in controversy between the parties may be completely and finally determined and all multiplicities of legal proceedings concerning any of those matter is avoided ...”***

10 The reason for this provision in the Judicature Act is simple; multiple orders which are contradictory will lead to confusion within the litigants in terms of enforcing them and discredit to the Judiciary which made the contradicting orders. It is therefore necessary at the earliest stage of any matter before court to deal with multiple cases and manage them before addressing oneself to the merits of the dispute.

15 In this matter the orders out of this Court and Nakawa High Court have already led to confusion. There is the Interim Order of release from Nakawa High Court dated 19th October 2012 by the Registrar. This was stayed by the order of Hon. Justice Christopher Madrama on the 25th October 2012.

20 Meanwhile Ms Namara, Tumwiine & Co. Advocates through criminal complaint Ref: CPS CRTS 6246/12 opened up a criminal dimension of obtaining money by false pretenses and tried to have some of the Court orders countermanded by the Police. The Police in their letter dated 22nd October 2012 refused to do so but none the less began investigations into the matter too.

25 As the dispute escalated the **Hon. Principal Judge** in his letter copied to me of the 15th November 2012, and the Resident Judge Nakawa High Court, requested that this dispute should not be allowed to escalate any further. Meanwhile on the 23rd November 2012 the Resident Judge Nakawa, **The Hon. Lady Justice Faith Mwendha**, in MA No. 432 of 2012 (Arising from HCCS No. 259 of 2012) made an order that:

30 ***“An order does issue and is hereby issued against the Respondent directing them to release 283.7 metric tonnes of sugar being illegally held at the Respondent’s (i.e. M/s Damco Logistic (U) Ltd) bonded warehouse located on 5th Street Industrial Area”***

35 In this matter before me counsel for M/s Damco Logistics (U) ltd submitted that his clients have a claim on the sugar because they are unpaid as transporters and warehousemen so they have a lien on the sugar. He also submitted that the order of the Hon. Justice Faith Mwendha has been appealed to the Court of Appeal.

40 Now the best way to deal with multiplicity of suits is to consolidate them as provided for under Order 11 of the Civil Procedure Rules (CPR). The benefits of consolidation need not be over emphasized as it will bring final resolution to the rights of all the parties which multiple suits can never do. Multiple suits only entrench the dispute in the court system and cause frustration to the

parties and inefficiency in the court. This is because as happened before in this case one court can be used to countermand orders of another which is an abuse of court process. I decided to maintain the status quo to date to see if consolidation could be explored.

5 I was notified by counsel for the 3rd and 5th Respondents that as far as the sugar was concerned it has been sold to the present 3rd Respondent M/s Dubai Click General Trading Co. Ltd by an agreement dated 27th August 2012. That agreement provides for advance payment of US\$ 211,356.50 through a Stanbic Bank Account No. 02400041177801. Counsel for the present Applicant states that his client is a signatory to that account and the proceeds of the said sale have
10 never been credited to the account, so there is no sale.

Counsel for the 3rd and 5th Respondents undertook to provide evidence of payment. Today a letter from the 1st Respondent signed by its Managing Director Mr. Muthana Abdul Jabar Mohammed has been produced stating that the said sugar was sold to the 3rd Respondent and paid in cash. He
15 also has made an affirmation in Dubai to that effect.

The documents produced today, especially the affirmation which at best can be said to be poorly executed without that all important Durat lends itself to more questions than answers and can only be resolved at trial .
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It is now clear to my mind that further management of this dispute under the present application at the Commercial Court is untenable because of existing court orders of equal jurisdiction at Nakawa Court which are first in time.

25 To avoid further confusion I hereby rest the orders of my learned brother Judge **Christopher Madrama** of 23rd October 2012 with no order as to costs, this is to avoid abuse of court process.

In light of the orders made at Nakawa court and the appeal lodged in the Court of Appeal the parties are order to pursue that single spine of litigation. As to this application and HCCS No.
30 447 of 2012 I direct that both files and any other under them be referred to Nakawa High Court for consolidation with HCCS No. 259 of 2012 there. Any issue relating to joinder of parties can be dealt with under Order 1 rule 10 CPR. I so order.

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Geoffrey Kiryabwire
JUDGE
04/12/2012