THE REPUBLIC OF UGANDA,

IN THE HIGH COURT OF UGANDA AT KAMPALA

(COMMERCIAL DIVISION)

HCCS No. 311 OF 2012

KAMUGISHA LENNARD}..... PLAINTIFF

VERSUS

UGANDA REVENUE AUTHORTY}..... DEFENDANT

BEFORE HON MR. JUSTICE CHRISTOPHER MADRAMA

RULING

This ruling arises from an application by the Plaintiff's lawyers for judgment on admission under the provisions of order 13 rules 6 of the Civil Procedure Rules. The background to the application is that the Plaintiff filed this suit to claim the balance of a reward after providing information to the Defendant about a taxpayer's evasion of taxes. The Plaintiff was paid part of the reward. The claim in the plaint is for special damages, punitive, aggravated and general damages, interest on special damages since it accrued till payment in full and costs of the suit. The Defendant admits in the written statement of defence that the Plaintiff provided information leading to recovery of tax from the taxpayer. However, the Defendant contends that part of the tax the subject matter of the information was voluntarily submitted to the Defendant by the taxpayer and therefore a reward was not payable on the voluntarily submitted tax.

The proceeded for the court annexed mandatory mediation but the mediation failed. Consequently the suit was forwarded for a scheduling conference. Under directions of court Counsels for the parties filed a joint scheduling memorandum on the 26th of June 2012 and the suit was fixed for preliminary hearing under rule 6 (1) of the Constitution (Commercial Court) (Practice) Directions. In the joint scheduling memorandum duly signed by Counsel, the following facts are admitted:

1. On August 20 8007, the Plaintiff furnished information to the Defendant that a certain taxpayer was evading taxes for the period 2004 – 2007 estimated at Uganda shillings 929,537 405/=.
2. The case was registered and a form number TIF 001034 was issued to the Plaintiff and the Applicant duly filled it.
3. VAT arrears of Uganda shillings 85 million was recovered by the Defendant and on 31 January 2008, the Plaintiff was paid Uganda shillings 8,500,000/= which being 10% of the VAT arrears recovered.
4. An additional payment to the Defendant was effected by the – taxpayer company ltd amounting to Uganda shillings 153,470,712/= and on 15 February 2008, a reward of Uganda shillings 15,347,071/= was processed and paid to the Plaintiff by the Defendant.
5. On 10 November 2008, a reward of shillings 1,675,400/= was paid to the Plaintiff from the principal balance of shillings 60,754,001/= making a total of shillings 255,224,713/= of which the Plaintiff has so far received a reward amount of Uganda shillings 25,522,471/= (10%) thereof.
6. On the 1 July 2007, Parliament enacted the Finance Act 2007 giving taxpayers a tax amnesty window for taxpayers who voluntarily declared tax due.
7. The total reconciled figure (tax liability) was shillings 481,190,769/=.
8. The Plaintiff is entitled to:
    a. Shillings 22,596,603/= being 10% of the reconciled tax liability balance of shillings 225,966,036/= collected by the Defendant from the taxpayer and for which the Plaintiff was not paid his reward.
    b. Interest on shillings 22,596,603/= from 30th of June 2008, the date of the said balance became due to 30th of June 2012 at an interest rate per annum as shall be decreed by court.
    c. Plaintiffs loan documents.

The agreed issues for trial are the following:

1. Whether the interest payable to the Plaintiff on the principal balance, shillings 22,596,603/= should be compounded or simple and at what rate.
2. Remedies and costs.

At the preliminary hearing on 29 June 2012, the Plaintiff was represented by Eric Muhwezi while the Defendant was represented by Angela Nairuba. There was discussion about the interest payable and no agreement was reached. The Defendants Counsel suggested that a court rate of 8% be applied. The Defendants Counsel further prayed for an adjournment to present everything to management so that a final word is given on the issue. The Plaintiff's Counsel did not agree on the interest rate of 8%. The preliminary hearing of the suit was adjourned to 12 July at 12 noon.

On 12 July 2012 the Plaintiff's Counsel was present while the Defendants Counsel was absent and court was informed that she was taken sick. Learned Counsel for the Plaintiff prayed for judgment on admission under order 13 rules 6 of the Civil Procedure Rules. The court declined to make a ruling due to the absence of the Defendants Counsel and requested Counsel to put in written submissions on the question and serve the respondents by 18 July 2012 and ruling was set for 20th July 2012 at 9:30 AM.

In the written application for judgment, learned Counsel for the Applicant/Plaintiff prays for judgment on admission under order 13 rules 6 of the Civil Procedure Rules. He submits that the Defendant considered simple interest at court rate of 8% per annum but the Plaintiff wanted more. He further contended that the Defendant accepted simple interest which is fixed by law under section 136 of the Income Tax Act. He therefore prayed for judgment on admission for:

1. Shillings 22,496,603/=
2. Shillings 7,230,912 (this is shillings 22,496,603/= x 8/100x4 years) giving a total of Uganda shillings 29,827,515.96/=
3. Costs on the admitted amount.

He prayed that the remaining issues should be determined by court after the hearing. The issues are: At what rate should the interest above 8% be calculated on a sum of Uganda shillings 22,406,603/=? Secondly remedies.

In reply the Assistant Commissioner for Litigation of the Respondent in a letter dated 16th of July 2012 wrote protesting the application for judgment on admission. The said letter protests the nature, character and manner of the application as a desperate attempt to abuse the pre-trial mediation and scheduling court processes.

Without prejudice the letter submits that the Plaintiff was offered Uganda shillings 22,496,603/= which is a sum composed of Uganda shillings 21,261,959/= and Uganda shillings 1,334,643/= arising from the principal tax and interest recovered in full and final settlement of all his claims. The Plaintiff rejected the offer. The respondent's letter indicates that the Plaintiff and his lawyers have consistently been told that a settlement can only be secured by way of a signed consent/partial consent order after sanction by management. He contended that it is disingenuous for the Plaintiff to turn around and file an application for judgment on admission based on mediation and scheduling proceedings. He submitted that this is not only morally incorrect but also offends court etiquette.

In rejoinder learned Counsel for the Plaintiff submitted that it was incorrect to assert that the Plaintiff was offered Shs. 22,496,603/= in full and final settlement of all his claims and that he rejected the offer. He contended that the true position is that the Defendant admitted indebtedness to the Plaintiff in the scheduling memorandum. Furthermore the rejection of the admitted indebtedness as alleged by the Defendant was not captured in the scheduling notes. Counsel relied on order 13 rules 6 of the Civil Procedure Rules which provides that any party may at any stage of the suit where an admission of facts has been made apply to the court for such judgment or order as upon the admission made without waiting for the determination of any other question between the parties. He submitted that the Plaintiff was entitled to apply for judgment on admission.

As far as interest is concerned he contended that the Defendant was offering 8% per annum which was not accepted by the Plaintiff. Finally that the Defendant's complaint in its submissions in reply is that the application for judgment is based on mediation proceedings, that it is morally incorrect, offends court etiquette and is erroneous both in law and fact. However Counsel submitted that mediation proceedings were not referred to in the application for judgment on admission and the Plaintiff's application it based solely on court proceedings before the trial judge as well as on the joint scheduling memorandum signed by both parties.

I have carefully considered the written objection of the respondents Counsel on the application for judgment on admission under order 13 rules 6 of the Civil Procedure Rules. First of all, the general rule on admissions, order 13 rule 6 reads as follows:

> "Any party may at any stage of a suit, where an admission of facts has been made, either on the pleadings or otherwise, apply to the court for such judgment or order as upon the admission he or she may be entitled to, without waiting for the determination of any other question between the parties; and the court may upon the application make such order, or give such judgment, as the court may think just."

The provision allows any party at any stage of a suit to apply for judgment on admission. The application is made where either in the pleadings or otherwise an admission of facts has been made. The word "otherwise" is broad enough to include a letter, oral testimony, scheduling memorandum etc. Secondly the party applying must be entitled to judgment upon the admission. Thirdly the application may be made at any stage of a suit. The application is made without prejudice to the determination of any other question between the parties. Lastly the rule gives the court discretionary power to enter judgment as the court may think just. It is now trite law that an admission has to be unequivocal and must admit a claim in the suit. The applicable rule is broad enough to permit an admission by the Plaintiff that it has no claim on any part of its case in the suit. This is because the words “any party” include Plaintiff or Defendant. In such a case the Defendant would be entitled to pray that the whole or a portion of the suit as upon the admission be dismissed.

In this case order 13 rule 6 has to be read in conjunction with order 12 of the Civil Procedure Rules where the admission arises during the scheduling conference. Order 12 rules 1 which provides for the scheduling conference provides that the scheduling conference shall sort out points of agreement and disagreement, the possibility of mediation, arbitration and any other form of settlement. Under order 12 rules 1 (2) where the parties reach an agreement, orders shall immediately be made in accordance with rules 6 and 7 of order 15 of the rules. Order 15 rule 6 of the Civil Procedure Rules deals with questions of fact or law stated by agreement of the parties in the form of issues. Order 15 rule 6 provides as follows:

> Where the parties to a suit are agreed as to the question of law or of fact to be decided between them, they may state the question in the form of an issue and enter into an agreement in writing that, upon the finding of the court in the affirmative or the negative of the issue—

(a) a sum of money specified in the agreement, or to be ascertained by the court or in such manner as the court may direct, shall be paid by one of the parties to the other of them, or that one of them be declared entitled to some right or subject to some liability specified in the agreement;

(b) some property specified in the agreement and in dispute in the suit shall be delivered by one of the parties to the other of them, or as that other may direct; or

(c) one or more of the parties shall do or abstain from doing some particular act in the agreement and relating to the matter in dispute.

Order 15 rule 6 (a) provides that an amount of money specified in the agreement or to be ascertained by the court may be paid by one of the parties to the other by agreement. In this case the scheduling memorandum contains agreed facts. This agreed facts were not stated in the form of issues. However the substance of the agreed facts can be established. The Plaintiff's Counsel relied on paragraph 8 of the admitted facts in the scheduling memorandum. Paragraph 8 which has been quoted above is reproduced here under for ease of reference. It reads as follows:

"The Plaintiff is entitled to:

(i) Shillings 22,596,603/= being 10% of the reconciled tax liability balance of shillings 225,966,036/= collected by the Defendant from the taxpayer and for which the Plaintiff was not paid his reward.
(ii) Interest on shillings 22,596,603/= from 30th of June 2008, the date of the said balance became due to 30th of June 2012 at an interest rate per annum as shall be decreed by court.
(iii) Plaintiffs loan documents."

The wording of the admitted facts does not only give facts as such but purports to give an entitlement to the Plaintiff. It further agrees that the interest on the entitlement shall be decreed by the court. What can be established from the admitted fact is that a sum of Uganda shillings 22,596,603/= represents 10% of reconciled tax liability balance of shillings 225,966,036/= which had been collected by the Defendant from the taxpayer. Secondly that the Plaintiff was not paid his reward out of this amount. This does not amount to a consent judgment though its wording

suggests that it was a decision of the parties that the Plaintiff is entitled to the 10% reflected in the above paragraph. An admission is not conclusive proof but operates as estoppels under the relevant sections as provided for under section 28 of the Evidence Act. In terms of order 12 of the Civil Procedure Rules the court is supposed to make an order pursuant to the agreement in the joint scheduling memorandum in terms of order 15 rules 7 of the Civil Procedure Rules. Suffice it to quote order 15 rules 7 of the Civil Procedure Rules which reads as follows:

> "7. Court, if satisfied that agreement was executed in good faith, may pronounce judgment.
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> Where the court is satisfied, after making such inquiry as it deems proper—
>
> (a) that the agreement was duly executed by the parties;
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> (b) that they have a substantial interest in the decision of the question as aforesaid; and
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> (c) that the question is fit to be tried and decided, it shall proceed to record and try the issue and state its finding or decision on the issue in the same manner as if the issue had been framed by the court; and shall, upon the finding or decision of the issue, pronounce judgment according to the terms of the agreement; and upon the judgment so pronounced a decree shall follow."

It is incumbent upon the court to make an enquiry about the agreement of the parties to establish whether it was duly executed. The court is to establish whether the parties have a substantial interest in the decision of the question. In this case it is the court to decide whether the agreed question is fit to be decided. Thereafter the court would pronounce judgment according to the terms of the agreement and a decree would follow.

In this case, no agreement had been reached that judgment be entered against the Defendant hence the application for judgment on admission under order 13 rule 6 of the Civil Procedure Rules by the Plaintiff’s Counsel.

It is a question of fact that a joint scheduling memorandum was signed. I have already set out the joint scheduling memorandum in which certain facts have been agreed upon. I agree with Counsel for the Plaintiff that this was not consequent upon mediation proceedings. There was

therefore no breach of etiquette or confidentiality in mediation proceedings. The joint scheduling memorandum is signed by both parties and speaks for itself.

I have critically considered the provisions of order 12 and 13 of the Civil Procedure Rules. The first valid conclusion that can be reached on the issue before the court is that order 12 is a special order that deals with the scheduling conference. On the other hand order 13 and particularly rule 6 thereof is a general provision that deals with admissions and application for judgment on admission. By the time the parties appeared in court, the court had given scheduling directions by which they were required to file a joint scheduling memorandum which was to include any agreed facts. After filing the joint scheduling memorandum, the court fixed the matter for preliminary hearing.

A preliminary hearing is conducted under rule 6 of the Constitution (Commercial Court) (Practice) Directions. Sub rule 2 thereof provides that the preliminary hearing will aim at achieving a serious discussion of the issues in the cause and the steps necessary to resolve them. Consequently there was a discussion of several aspects of the scheduling memorandum including the question of interest. No final agreement was reached. Secondly, the agreement in the scheduling memorandum must be taken to agree to facts. The part relied on is entitled “Admitted Facts”. An admission of liability is not an admission of fact particularly as in this case where the right to a reward is specified by Statute and should be assessed on the merits. If the parties had intended that judgment be entered on any admitted facts, they ought to have filed a consent judgment reflecting a partial settlement under clause 8 of the scheduling memorandum. As it were, the parties left the matter to the court. In those circumstances the duty was on the court under order 12 rules 1 (2) of the Civil Procedure Rules to make an order in terms of rules 6 and 7 of order 15 of the Civil Procedure Rules. This is a procedural requirement with safeguards built in it.

The proceedings before the court were still that of a preliminary hearings under the Constitution (Commercial Court) (Practice) Directions read in conjunction with order 12 rule 1 (2) and order 15 rules 6 and 7 of the Civil Procedure Rules. Whereas order 13 rule 6 of the Civil Procedure Rules, cannot be completely excluded, the point is that the court had not yet exercised its mandate under order 12 of the Civil Procedure Rules whose provisions are mandatory. Order 12 rules 1 (2) provides as follows: "*Where the parties reach an agreement, orders shall immediately*

be made in accordance with rules 6 and 7 of order 15 of these Rules." Consequently it was premature for the Plaintiff to apply for judgment on admission before the court does its part under the relevant procedure. On the other hand the duty on the court is to assess whether the agreement were duly executed under order 15 rules 7 of the Civil Procedure Rules. The question therefore is whether the agreement was duly executed by the parties. Learned Counsel for the respondent sought an adjournment to present everything to management to decide on the Plaintiffs claim. I must add that the plaintiff and the management of the defendant in theory share the same vision on tax collection.

On 12 July 2012 when the matter came for her to report, the Respondent's Counsel was unwell and therefore did not appear in court. Learned Counsel for the Plaintiff applied for judgment on admission but the court declined to enter judgment under order 13 rules 6 and advised Counsel to apply for judgment in writing and serve the respondent. The court had in mind the unavailability of the respondents counsel and the plaintiff's plea for expedition in his peculiar situation on his information that he was facing financial embarrassment and threats from creditors. When the respondent was served, they protested the methodology used to apply for judgment on admission. In paragraph 2 of the letter they write that the application for judgment is a desperate attempt to abuse the pre-trial mediation and scheduling court processes.

I do not agree that there was an abuse of court process. I do agree that the procedure applicable is provided for under order 12 of the CPR which mandates the court to immediately pronounce judgment upon being satisfied in terms of order 15 rules 7 of the Civil Procedure Rules read in conjunction with the provisions of order 12. At this stage of the proceedings I cannot say that the agreement was duly executed when learned Counsel for the respondent had sought time to obtain clearance from the Defendants management on the question of entitlement of the Plaintiff. The agreement in the scheduling memorandum should therefore be restricted on questions of fact upon which the court has to make an order under order 12 rule 1 (2) and Order 15 rules 6 and 7 of the Civil Procedure Rules.

Furthermore, it is only a presumption in the ordinary course of proceedings that learned Counsel for the Defendant by the time of signing the scheduling memorandum had full authority to make the admissions on entitlement of the Plaintiff. I am mindful of the fact that in the last preliminary hearing learned Counsel for the Defendant submitted that she was awaiting final approval of the

management of the Defendant on the claim of the Plaintiff. Secondly the Defendant is a statutory corporation with internal management rules. Much as Counsel should be cautioned not to make commitments without requisite approval, I would at this stage of the proceedings, hesitate to enter judgment on admission but will proceed under order 15 rule 7 which is the applicable rule at this stage.

There is therefore a small window left for the Defendant to report to court about what the management decided on the Plaintiffs claim. This opportunity is a matter of due procedure under order 12 rule 1 (2) and order 15 rules 7 of the Civil Procedure Rules. Thereafter the rules direct the court to pronounce judgment under order 15 rules 7 (supra). It is therefore my direction that the respondent shall communicate its written final position on the Plaintiffs claim in accordance with the request of learned Counsel for the Defendant during the preliminary hearing held on 28 June 2012 before the court decides. The decision of the court is stayed pending that communication. The communication shall be made within one week from the date of this ruling and addressed to the registrar of the court and will be forwarded to me to make my decision. Costs of today shall be borne by the Defendant in any event because they never took the opportunity to communicate the final position of the Defendant after they were served with the written submissions in the application for judgment on admission.

Ruling read in open court this 20th day of July 2012.

Hon. Mr. Justice Christopher Madrama

Ruling delivered in the presence of:

Angela Nairuba Mugisha for the Defendant

Magambo Victor holds brief for Eric Muhwezi Counsel for plaintiff

Plaintiff in court

Ojambo Makoha Court Clerk

Hon. Mr. Justice Christopher Madrama

Friday, 20 July 2012