

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

HCT-00-CC-MA-0003-2012

ACROSS AFRICA CLEARING AND
FORWARDING CO LTD.APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY }
SARAH A. KASHEKWA MWESIGYE}..... RESPONDENT

BEFORE HON. MR. JUSTICE MASALU W. MUSENE

RULING:

29/01/2013

This is an application for leave to appeal to the court of appeal against the orders and ruling of this court made on the on the 22.1. 2013 in a preliminary objection that arose in an application for orders of Judicial Review seeking reliefs of certiorari, declarations, mandamus, prohibition, injunction, damages and costs.

The application, **Miscellaneous Cause No 3 of 2012** was filed by Across Africa Clearing and Forwarding Company Ltd against Uganda Revenue Authority and Sarah Kashekwa Mwesigye. And that Application for ‘Judicial Review was brought under Article 42,44,28(i), 50 of the constitution, section 3 of the Judicature (Amendment) Act No 3/2002 and Rules 3, 4, 6, 7 and 8 of the Judicature (judicial Review of Rules, 2009. Across African Clearing and Forwarding Company Ltd.

Was represented by Mr. Simon Tendo Kabenge and Dr. James Akampumuza, while Uganda Revenue Authority and Sarah Kashekwas were representative by Mr Kataka Farouk and Mr. Peter Mulisa.

The brief facts of the matter that gave rise to the application were that the Applicant is a clearing agent dully registered by Uganda Revenue Authority, 1st Respondent. The lincence of Across African Clearing and Forwarding Company Ltd. was suspended and terminated consequently. The Applicant, Across Africa Clearing and Forwarding Company Ltd filed Misc Cause No of 2012 for Judicial Review against Uganda Revenue Authority and Sarah A, Kashekwa challenging the termination and alleging financial loss and damages. Before the Hearing of the application, Mr. Kitaka Farouk for the Respondents rose to raise preliminary objections to the entire application, which he alleged was not competent before the Honourable Court. He stated that he had three preliminary objections, but before he could proceed, Mr. Tendo Kabenge for the Applicant objected.

He submitted that the preliminary objections could not be raised because under order 6 rule 28, of the Civil Procedure rules a party entitled to raise a preliminary objection on point of law if it has been stated in the pleadings. And that since Uganda Revenue Authority and Sarah Kashekwa had not raised their point of law in the affidavit in reply, the court proceeds to hear the substantive application. Mr. Kitaka Farouk insisted that proceeding with the Application for review before entertaining the preliminary objection would compromise the procedural requirements under the law and that the point of law touches the entire root of the Application. This court overruled Counsels for the Applicant now on the basis of Order rule 28 of the Civil Procedure rules. In the Afternoon of the same date of 22.1.2013, Mr. Peter Mulisa for Uganda Revenue Authority applied for leave to

appeal against the Ruling of this Court under O. 44 r. 2 of the Civil Procedure rules. Again, Mr. Tendo Kabenge and Dr. Akampumuza vehemently opposed the application for leave to appeal to the Court of Appeal with very lengthy submissions. But for purposes of this ruling, they are summarised as follows:-

- (1) That leave to appeal is not a matter of Course. That the Applicant must show good faith and honest intentions.
- (2) That it is an abuse of court process and an attempt to delayed the hearing of the case
- (3) That an appeal must be based on a point of law of public interest.
- (4) That an application for leave no appeal must be made by a Notice of Motion under O. 4 r. 4 of the Civil Procedure rules.
- (5) That an application for leave to appeal must demonstrate that if it's not granted, the applicant will suffer great/grave injustice.

Mr. Peter Mulisa in reply maintained that there is no evidence of intended delay of Justice and that leave for appeal can be either orally made or by Notice of Motion. He concluded that in their view, the entire application is incompetent. I have carefully considered and analysed the submissions on both sides in this application for leave to appeal to the Court of Appeal. I must emphasise that the discretion to allow parties leave to appeal to the Court of Appeal in preliminary or interlocutory matters of this Nature lies with this court. And such application must not be intended to delay the hearing of the main case. However, there is need to clear the air as to whether the Application is incompetent for not having been brought by Notice of Motion under O. 40 r 4 of the Civil Procedure rules. In **Sango Bay Estates Ltd and Others Vs Dresdner Bank 1992 E. A. 17**, the East African Court of Appeal held that Application for leave to appeal may be made informally.

The application in this matter was therefore properly made orally. As to whether it ought to be allowed, it is the submissions of Counsel for Uganda Revenue Authority and M/s Sarah A Kashekwa that the application for review is incompetent. The Court in the case of Sango Bay referred to above held that leave would normally be granted where Prima Facie it appears that there are grounds of appeal which merit serious Judicial consideration. And in **Degeya Trading Stores (U) Ltd. Vs Uganda Revenue Authority Court of Appeal Civil Application No 16 of 1996**, their Lordships of the Court of Appeal of Uganda observed that,

“An Applicant seeking leave to appeal must show either that his intended Appeal has reasonable chance of success of that he has arguable grounds of appeal and has not been guilty of dilatory conduct.”

In the present application, counsels for the Applicants stated in court that he had three grounds but before he could stated them, Mr. Tendo Kagengo jumped up to object. I regret to state that this court should have allowed the three grounds other than listening to the detailed submissions in objection by the Advocates for the Respondent;

Never the less it is not too late, particularly in view of the submissions which are on record by counsel for the Applicant the point of law touches on the root of the Application for Judicial Review. **I am also mindful of Article 126 (e) of the constitution of the country which emphasises substantive Justice as opposed to technical rules.** And if the Applicants strongly believe that the whole application for Judicial review is incompetent on a point of law which goes to the root o the application, then I am inclined to allow this application for leave to appeal to the Court of Appeal. I also order that costs be in the cause.

Hon. Mr. Justice M. W. Musene
HIGH COURT JUDGE
29/01/2013