

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

HCT-00-CC-CS-0777-2013
(ARISING FROM CIVIL SUIT NO. 5510F 2013)

1. PEAL FLOWERS LTD
2. RAGBHIR SING SANDHUAPPLICANT S
3. GURMEET KAUR SANHU

VERSUS

BARCLAYS BANK OF UGANDA LTD RESPONDENT

BEFORE HON. MR. JUSTICE MASALU W. MUSENE

RULING:

The applicants, Peal Flowers Ltd, and two others filed an application under O. 36 rules 3 and 4 of the Civil Procedure rules and O. 52 r. 1 (CPR) for unconditional leave to appear and defend Civil Suit No 551 of 2012. The suit having been filed again then under summary procedure by the Barclays Bank of Uganda Ltd.

Mr. Erbert Byenkya represented the Applicants, while Mr. Masembe Kanyerezi and Mr. Bwogi Kalibala represented the Respondent, Barclays Bank of Uganda Ltd. Before the Applicants could be heard yesterday, Mr Masembe Kanyerezi applied by way of preliminary application that hearing be stayed pending the hearing of an application for contempt of court in another matter Misc. Application No 268 of 2013 arising out of Civil Suit No 146 of 2013 before my brother Judge, Hon Kiryabwire. He quoted the Kenya High Court case Wildlife Lodges Ltd Vs

Country Council of Norok and Another, 2005 E.A. 344 to support his application. Mr. Erbert Byenkya for the Applicants opposed the Application.

In the first instance I would like to rightly state or point out that the two cases and applications therein before Justice Kiryabwire and before this court are different. In Civil Suit No. 146 of 2013 and Misc. Application No 146 of 2013 for contempt of court, which are pending before Justice Kiryabwire the plaintiff Pearl Flowers.

Versus

1. Barclays Bank Uganda Ltd
2. Earnest Sembatya
3. Stephen Kasenge

In the case before this court, Civil Suit No. 551 of 2012, the plaintiff is Barclays Bank of Uganda Ltd.

Versus

1. Pearl Flowers Ltd.
2. Raghbil Sing Sandu
3. Gurmeet Raghbil Sandu

And the two applications arising there from, names Misc. Application No. 820 of 2012 for temporary injunction before this court are between the above parties. With all respect therefore, the two case and their respective applications therein are completely different and before two judges or the Commercial Court who hold equal jurisdiction.

The is not way therefore for Counsel for Respondents can ask this court to stay hearing of an application pending hearing of a different application arising in a different suit before my brother Justice Kiryabwire.

In the first instance under what law such an application can be sustainable has not been stated. Secondly, for this court to stay hearing of an application for leave to appear defend pending hearing of a different application for contempt of court before Justice Kiryabwire would mean that the court of Justice Kiryabwire is Superior of this court. For all practical purpose and intends, the court Justice Kiryabwire is not superior to this court.

The case of **Wild Life Lodges Ltd Vs country City Council of Norok & Another is distinguishable in that it is the same case Justice Ojwang of High Court of Kenya who has issued the earlier order alleged to have been violated.** My brother Justice Ojwang in granting an application for leave to hearing of a Judicial Review on condition that all dealings in the land know as Norok/as Mara Block 3 in Masai mara Game Reserve be stayed pending the hearing of the application or Judicial Review within 21 days. So it was an attempt to disobey the order of stay made by Justice Ojwang that an application was filed before the same Judge for contempt. It was not two different case and two applications arising therefore before two judgments as in the present preliminary point. Everything in that case was before the same judge.

Judge

So where it is two different Judges of equal Jurisdiction handling different cases and different applications, each Judge has to proceed with his own case. The

preliminary point in the circumstances hereby overruled, and this court will proceed with the Application for unconditional leave to appear and defend.

24.4.2013

Mr. Stephen Zimula for Respondents present

Pro. Fredrick Sempala holding brief for Mr. Byenkya for Applicant

Mr. Ojambo Court Clerk present

Court: Ruling read out in open court

Hon. Mr. Justice W. M. Musene

HIGH COURT JUDGE