THE REPUBLIC OF UGANDA,

IN THE HIGH COURT OF UGANDA

AT KAMPALA

(COMMERCIAL DIVISION)

CIVIL SUIT NO 282 OF 2012

BAKANANSA HALIMAH}.....PLAINTIFF

VERSUS

ATUHAIRE ANDREW}.....DEFENDANT

BEFORE HON. MR. JUSTICE CHRISTOPHER MADRAMA IZAMA

RULING

This is ruling arises from an agreement by counsel for determination of the suit on the basis of agreed facts. Counsels also agreed that the only matter for determination was whether the contract between the plaintiff and the defendant was illegal.

The plaintiff's action in the plaint is for recovery of US$30,000 from the defendant with interest, general damages, and costs of the suit. It is averred in the plaint that on 10 December 2011, the plaintiff ventured in a business relationship with the defendant for the defendant to trade for profit the plaintiffs US$40,000 which had already been deposited on the plaintiffs FX-PRO account number 163693 opened up for the same trade. The defendant agreed to run or trade the plaintiffs account professionally, diligently and carefully in bid to avoid making losses. It was agreed by the parties that if the defendant was to incur any losses, the loss should not exceed 25% of the plaintiffs US$40,000 managed by the defendant. Secondly the defendant would not be liable for any loss amounting to 25% of the plaintiffs US$40,000. It was agreed that the defendant shall indemnify any loss beyond the agreed loss of 25% of the US$40,000. It was further agreed that the defendant upon making a loss of up to a total of 25% of the original US$40,000, would cease trading and inform the plaintiff about the losses.

After about one month from the commencement of the agreement, the defendant gradually made losses beyond the agreed 25% loss. Subsequently despite a reminder not to make a loss beyond 25% of the capital, the defendant lost the entire US$40,000 of the plaintiff entrusted to him. Efforts to arbitrate the dispute between the parties were futile. The plaintiff is indebted to the defendant in the sum of US$30,000 which the defendant has neglected or failed to pay back.

In the written statement of defence the plaintiff avers that the suit against him is barred in law, misconceived and a result of an illegal business practised between the plaintiff and the cyber

entity called FX Pro. Consequently the defendant avers that the plaintiff is not entitled to the reliefs sought in the plaint. Alternatively the defendant contends in the written statement of defence that the plaintiff at all material times dealt with a cyber entity called FX pro with whom she deposited money and enlisted the defendant as a player in a game based on luck and chance. The defendant was only hired as a player to a virtual game and was only tricked by the plaintiff and her brother to enter into an agreement which is annexed to the plaint. The plaintiff entered the game knowing that it was a high-risk game well aware that it was capable of high profits or losses and that it was investing money in a game only what she was willing to lose. The defendant claims not to be liable on the ground that he was only a player in the game between the plaintiff and a foreign company and has never received any money from the plaintiff.

The defendant also counterclaimed for general damages, punitive damages, interests and costs of the suit and counterclaim. In the counterclaim the defendant avers that on the 8th of March, 2012, when he was called by a brother of the plaintiff for a meeting to discuss how the game was progressing, he was arrested by the police and kept in police custody for three days until he was released on police bond. The defendant alleges that after the arrest he was traumatised, emotionally drained and his family members embarked on frantic searches to establish whereabouts.

In reply the plaintiff avers that there was nothing illegal in the account management agreement entered into with the defendant. Secondly the agreement was witnessed by two advocates of the high court and at all material times the defendant's lawyers acknowledged the fact that the Forex trading agreement was enforceable. Furthermore the business relationship is an account management agreement as evidenced by the agreement Annexure "B".

As far as the counterclaim of the defendant is concerned, the plaintiff averred that it was misplaced and misconceived and does not disclose a cause of action and ought to be dismissed with costs. The handling of the defendant/counterclaim and by the police is an entirely different matter from the plaintiff's cause of action in the suit. There is nothing commercial about the defendants counter claim to be investigated in this court and the plaintiff prays that the defendant's counterclaim is dismissed with costs.

At the hearing of the suit, the plaintiff was represented by Counsel Edward Mukwaya while the defendant is represented by Counsel Gabriel Byamugisha.

Both counsels filed a joint scheduling memorandum containing agreed facts and documents and issues for trial and also attached agreed documents in the trial bundle. It is agreed that both the plaintiff and the defendant entered into a business relationship wherein the plaintiff deposited US$40,000 on an FX Pro account with the defendant as a player on the same account. The defendant traded on the plaintiff's account leading to total loss of the business. The agreed issues for trial are as follows:

1. Whether there was a breach of contract by the defendant.

2. Whether the defendant is liable to refund the plaintiff.
3. Remedies available.

Counsels agreed on a document entitled "Account Management Agreement" which was annexed as exhibit P1. Several other documents were exhibited namely exhibit P2, P3 and D1 and D2 which will be referred to in this judgment.

On the agreement of counsels that there were no factual controversies, counsels opted to address the court in writing on the points of law arising from the transaction.

Submissions were commenced by the defendant as an objection to the suit.

Defendant's submissions

The defendants submissions are based on alleged agreed facts which are briefly that the plaintiff opened an FX – Pro account number 163693 with a cyber entity called Fx – PRO, based in Cyprus. After opening the account, the plaintiff deposited US$40,000 and employed the defendant as the player in a game of chance. When opening the account, the plaintiff was availed a document called "Risk of Disclosure for Financial Instruments". This document provided inter alia as follows:

> "The client should unreservedly acknowledge and accepted that, regardless of any information which may be offered by the company, the values of the financial instruments provided by the company may fluctuate downwards or upwards and it is even probable that the investment may become of no value".
>
> "The client should unreservedly acknowledge and accept that he runs a great risk of incurring losses and damages as a result of the dealing in financial instruments and accepts and declares that he is willing to undertake the risk".

The plaintiff voluntarily opened an account and deposited thereon US$40,000. The defendant was then hired by the plaintiff as the player on the said account. He was not a signatory to the account but was only supposed to play and trade with the money on the cyber market.

Finally counsel submitted that the contract that the defendant entered into with the plaintiff on 10 December 2011 was an illegal contract devoid of any consideration and unenforceable. The defendant undertook to exercise his skill and experience in the trading of currencies on the FX – Pro account in the names of the plaintiff. Therefore the defendant was only acting as an agent of the plaintiff in trading online on the account. The concession of 25% as offered in the agreement was in recognition of the risks involved. The defendant was recruited to run the account when the plaintiff had already opened the account. The plaintiff was fully knowledgeable in the trade and well aware of the risks it contained. The agreement is unenforceable for lack of consideration. Section 10 (i) of the Contracts Act, 2010 provides that a contract is an agreement made with the free consent of the parties with capacity to contract for a lawful consideration and

with a lawful object and with an intention to be legally bound. Under section 19 (i), the consideration or an object of an agreement is lawful except where it is forbidden by law. Furthermore the subject of the contract in issue offends the provisions of sections 19 (a) and (b) in that it offends the provisions of statute law. The subject matter of the contract offends the provisions of the Gaming and Betting (Control and Taxation) Act Cap 292. The transaction of forex trading without a licence offends the Gaming and Betting (Control and Taxation) Act. Section 1 (b) thereof defines pool as playing of a game of chance for winnings in money or moneys' worth. Section 2 prohibits promoting games and pools, acting as an agent of the promoter without a licence and contravention thereof is an offence.

In the premises the defendants counsel contends that the contract is illegal because it promoted games and pools without a licence and without any tangible consideration to the defendant and therefore this suit arising or based on it is a nullity. Furthermore the defendant had no direct contract with Messieurs FX Pro Financial services Ltd and could not access the money on the account. His duty was only to place bets online. The defendant was playing for no pay and would only gain as and when a profit was realised. It was entirely a game of chances. Counsel contends that the defendant is not enabled to control the FX – Pro account. He could neither deposit nor withdraw on the said account. He could only place bets on the cyber market and either win or lose. The account holder was the plaintiff and any loss or gain went to the plaintiff. In this case a total loss happened and the plaintiff has to inevitably meet it. It would be rather unthinkable and unjustified for such loss to be shifted to the defendant who was an agent of a disclosed principal namely the plaintiff. In the premises the defendants counsel contends that the plaintiff's suit is barred in law and incompetent as against the defendant.

In reply the plaintiff's counsel submitted that the facts presented by the defendants counsel were not exhaustive and do not reflect what actually transpired. The plaintiff's counsel relied on the agreed facts in the joint scheduling memorandum and documents admitted in evidence by consent. The brief facts are that the parties entered into a business relationship evidenced by the account management agreement where the plaintiff deposited US$40,000 on an FX Pro account with the defendant as a player on the same account. The defendant traded on the plaintiff's account leading to total loss of business. Under clause 7 of the agreement, the defendant was not be liable for any loss amounting to 25% of the sum initially be posted and would only be liable for any loss which was beyond 25% thereof. The plaintiff's action is for recovery of US$30,000 being the loss beyond 25% occasioned to the plaintiff which loss amounts to US$30,000.

It is not in dispute that the defendant breached the contract by causing a total loss of the money deposited. However the defendant and its counsel's submissions are that he is not liable to refund the plaintiffs money since the account management agreement which give rise to the business relationship between him and the plaintiff was illegal and contravened the Gaming and Pool Betting (Control and Taxation) Act and the provisions of the Contract Act 2010. The plaintiff's counsel submitted that under section 10 (1) of the Contracts Act 2010 there should be evidence of meeting of minds, made with the free consent and with a lawful object for there to be a

contract. The parties executed an account management contract with the lawful object of transacting business and at all times knew and acknowledged that the contract is legally binding and this is evidenced by various correspondences between the parties.

The contract attached as annexure "A" to the plaint is self explanatory and shows that it is an account management agreement governed by the Contracts Act cap 73 which was in force at the time of its execution. It is not a bet or a game of chance. It is apparent from the agreement that the defendant has a high level of skill and experience in trading in currencies online. The defendant ought not to turn around and allege that the contract in issue is illegal and unenforceable yet he used his expertise and skill to engage in the plaintiffs business.

The Plaintiff's Counsel contends that the provisions of the Gaming and Pool Betting (Control and Taxation) Act Cap 292 are not applicable since the contract in issue was neither a game nor a pool within the meaning of the Act but rather an account management agreement.

The plaintiff's counsel further submits that whoever comes to equity must come with clean hands. He contends that the defendant cannot be seen to say that they cannot refund the plaintiffs money on the ground that the contract is unenforceable yet he represented to the plaintiff that they had a high level of skill and experience and that he owed a duty of care not to cause a loss beyond 25% of the plaintiffs money at his disposal and he breached that duty of care through recklessness. Furthermore, some of the defendant's submissions are submissions from the bar and not on the basis of agreed facts in the scheduling memorandum and joint trial bundle. For instance the defendants counsel cannot claim that the plaintiff was availed annexure "A" to the WSD. In any case every business has expectation of loss and the fact of loss cannot render the business illegal.

In the alternative the plaintiff's counsel submitted without prejudice that the plaintiff was innocent of any illegality relied upon by the defendant. The plaintiff relied on the expertise of the defendant. Secondly the parties were not in *pari delicto* and the plaintiff was innocent of any illegality alleged.

Counsel relied on **Harjit Singh Mangat vs. Christine Lillian Nakitto HCCS number 442** of 2003 where the court considered what in law amounted to an illegal transaction. The first test to be considered on the issue of whether parties are in pari delicto is whether the parties are at par with regard to their guilt. Furthermore even though a party may share some criminality, there are circumstances where it is recognised that a party will be allowed to recover. These include cases where the illegality involved was the contravention of a statute designed to protect a class of persons of which the plaintiff is a member or where there has been oppression, duress, undue influence or fraud on the part of the defendant, or where there was a mistake of fact on the part of the plaintiff.

Counsel contended that there was no illegality on the part of the plaintiff and the defendant made the plaintiff to believe that the contract was valid and enforceable since it is apparent from the

agreement that he held out to be an expert and skilful in the business at hand. The defendant cannot turn round and claim that he will not refund the plaintiffs money. The plaintiff's counsel submitted that the defendant was barred by the doctrine of estoppels from denying the fact that he executed the contract under no duress or undue influence. Lastly counsel submitted that it was in the interest of justice that the defendant is ordered to account for the loss occasioned the plaintiff in accordance with the terms of the contract and it was equitable that the defendant is ordered to pay the plaintiffs since equity does not allow a wrong to go without a remedy.

In reply the defendants counsel reiterated submissions that the Contracts Act, 2010 forbade executing a contract without a lawful consideration. Counsel contended that it was clear from the agreement that no consideration was furnished by the plaintiff. Secondly the defendant did not have any access or any gain in the use of the money the plaintiff seeks to recover from him. Counsel relied on the case of **Curie versus Misa (1875) L.R. Ex 153** which defines consideration as some right, interest, profit or benefit accruing to one party or some forbearance, detriment, loss suffered by the other. The consideration should be a lawful obligation. In this case however the consideration was futuristic and could only materialise upon gain in a game of chance. In fact no consideration was furnished.

Furthermore even if the agreement was enforceable, it falls under the law of agency. Under the law of agency, the principal takes both the profit and losses as well as liability. The agent is only entitled to its commission. The plaintiff was the sole beneficiary of the profits and would only pay commission to the defendant. So the plaintiff should take the losses suffered.

Concerning the loans of the defendant on annexure "A" to the written statement of defence, the document was properly relied upon. The Annexure to the written statement of defence is part of the scheduling memorandum and properly relied upon. In the premises counsel reiterated submissions for the Plaintiff’s suit to be dismissed.

Ruling

I have duly considered the pleadings of the parties, the scheduling memorandum which includes agreed facts and documents and issues for trial. I have further considered the written submissions of counsel and authorities cited as set out above. No oral evidence was adduced by any of the parties and therefore no witnesses were called. On 21 November 2013 both counsels upon filing the joint scheduling memorandum and trial bundle represented to court that they could have the case determined on the basis of agreed facts.

The scope of the agreement to have the case determined on the basis of agreed facts is that the entire dispute can be determined on that basis or that the outcome of such a determination would be on the merits of the suit. Most importantly the material agreed facts concerns a written contract agreed upon by both parties leading to actions there-under. The agreed facts are however scanty. I have carefully reviewed the agreed facts. It was agreed that both the plaintiff and the defendant entered a business relationship whereby the plaintiff deposited US$40,000

with an FX Pro account with the defendant as a player on the same account. It is further agreed that the defendant traded on the plaintiff's account leading to total loss of the business. What was not agreed was whether the defendant breached the contract and traded negligently leading to loss of the plaintiff's money. Secondly it was not agreed that the defendant is liable to refund US$30,000 to the plaintiff. In the agreed scheduling memorandum the following are the issues for determination:

1. Whether there was breach of contract by the defendant?
2. Whether the defendant is liable to refund to the plaintiff?
3. Remedies available.

In the trial bundle a document referred to as the Account Management Agreement was exhibited as exhibit P1 by agreement. Secondly a document referred to as an attachment to the plaint is indicated as exhibit P2. Thirdly e-mail correspondence between the plaintiff and the defendant was exhibit P3. On the part of the defendant, a document entitled "Risk of Disclosure for Financial Instruments" was exhibited by consent as exhibit D1. Secondly any attachments to the written statement of defence were indicated as an agreed document exhibit D2. Both counsels endorsed the agreement embodied by the joint scheduling memorandum and trial bundle on 19 November 2013.

I take it that the agreed documents are in support of the agreed facts which included the agreement that there was a business relationship in which the plaintiff deposited US$40,000 on a certain account and the defendant was a player on that account. Secondly under that arrangement the defendant was engaged by the plaintiff as a player and lost all the US$40,000. The plaintiff's counsel suggested that it was erroneous for the defendants counsel to rely on the attachments to the written statement of defence. However all the attachments to the written statement of defence were agreed to and exhibited as exhibit D2. On the basis of the agreement counsels filed written submissions.

The defendants counsel assumed and on the basis of that assumption submitted on a point of law which in his view would totally constitute a defence to the plaintiff's action. It is also apparent to me that the defence is not a denial of the fact that the defendant was a player on a certain account specified by the parties and he lost the plaintiff's US$40,000. The basic fact underlying the agreed facts is the presence of a contract or in other words the existence of a business relationship between the plaintiff and the defendant whose terms were reduced in writing. This business relationship was reflected inter alia in an agreement exhibited as exhibit P1 between the defendant as the manager on one part and the plaintiff as the client on the other part. Written agreements speak for themselves. In exhibit P1 the preamble indicates that the defendant has a high level of skill and experience in the trading of currencies online. Secondly it was agreed that the plaintiff was desirous of benefiting from the manager's skill in the conduct of the business. The parties agreed on the trading account in Cyprus. The account was to be funded by US$40,000 which was to be availed to the manager under the agreement. The agreement was for

a period of 120 days and was to expire on 10 June 2012. The agreement was executed on 10 December 2011. The parties were to share a 50% profit each based on the trading by the defendant.

In paragraph 7 of the agreement, it is agreed that the manager shall not be liable for any loss amounting to 25% of the sum initially deposited. However the manager was to be responsible to the client for and be liable to indemnify the client in respect of any loss beyond 25% of the sum initially deposited of US$40,000.

The defendants counsel raised a point of law that the agreement contravened the Gaming and Pool Betting (Control and Taxation) Act Cap 292. This indirectly rephrases the issues and gives rise to an issue as to whether the parties executed a binding contract. Secondly the defendants counsel attempted to submit on the question of consideration but still used the same argument of illegality in that he submitted that the contract did not have a lawful object. Consequently it is a point of law as to whether the contract was illegal and unenforceable.

The first factual observation which I need to make is that the business was supposed to be conducted on an account in Cyprus. This is evidenced by the document exhibit D1 entitled FXPRO "Risk Disclosure for Financial Instruments". The agreement as reflected by the title dealt with trading in financial instruments.

The basis of the defendants proposed point of law is the assumption that the business the parties engaged in is a game of chance. As to whether the business was a game of chance or not is a question of fact. The plaintiff on the other hand has denied that the business involved a game of chance. On the face of it, it was a business of dealing in financial instruments provided by the company which instruments are defined as derivative securities in the agreed document. Exhibit P1 which is the agreement referred to above on the face of it provides that the account opened by the client namely the plaintiff was the trading account in her names held with Messieurs FXPRO Financial Services Ltd, a company registered in Cyprus. It is not indicated where the physical account is held. It may be assumed that the account was in Cyprus where the financial services company is registered. Certain territorial questions are implicit in the submission that the trading was in cyberspace. Was it not an undertaking to invest or trade using US$40,000 via the Internet? Is it a trade in a foreign country? There is no satisfactory factual evidence to resolve the question of trading online. Secondly both parties obviously never addressed the court on the issue which in any case arises from assertions of fact.

There is no prima facie evidence or agreed fact that the business involved any form of a game of chance. By using the word "playing" by the defendant, there is a variance in the conception with the contractual terms admitted in evidence as to whether "playing" does not mean "trading". In any case the plaintiff does not admit to "playing" in the sense of a game but to "playing" in the sense of "trading". It is also not indicated whether the business was conducted in Uganda or in Cyprus. Where was the "player" or "trader" situated at the time of the transaction? There is only

a submission that the business was conducted in Cyber space online. There is no agreement that the business was a gaming business. Quite the contrary the agreements admitted in evidence referred to concern trading in securities. The term "derivative securities" which appears in one of the documents as the nature of the business objects traded in has not been clearly defined in the submissions. In fact it has not been referred to at all. To illustrate the implications of such definitions, trading in securities and the licensing of persons to trade in securities is governed by the Capital Markets Authority Act cap 84 laws of Uganda. Securities are defined under section 1 (hh) of the Capital Markets Authority Act Cap 84. They include debentures, stocks, bonds issued or proposed to be issued by a government, debentures, stocks, shares, bonds or notes issued or proposed to be issued by a body corporate, any right, warrant, option, or future in respect of any debenture, stocks, shares, bonds, notes or in respect of commodities or any instruments commonly known as securities but does not include bills of exchange, promissory notes, certificates of deposit issued by a bank or financial institution licensed under the Bank of Uganda Act. The Act permits investment advisers to carry on the business under a contract of arrangement with the client and to undertake on behalf of the client management of a portfolio of securities for purposes of investment. Consequently on the face of the written agreement between the parties, it cannot be concluded that the contract involved gaming or gambling by whatever name called. There is disagreement about the nature of the account as to whether it was for purposes of the game or pool or an account management agreement. Consequently the question as to whether the contract was governed by the Gaming and Pool Betting (Control and Taxation) Act Cap 292 or the Capital Authorities Act Cap 84 requires factual data which is not available for resolution of the question.

Finally on the question of procedure, agreements are permissible under Order 12 rule 1 (2) of the Civil Procedure Rules which provides that where the parties reach an agreement, orders shall immediately be made in accordance with rules 6 and 7 of Order 15 of the Civil Procedure Rules. The agreement of Counsels of the parties was arrived at during the scheduling process under Order 12 of the Civil Procedure Rules. Order 15 deals with settlement of issues and determination of the suit on issues of law or issues agreed upon. Order 15 rule 6 of the Civil Procedure Rules provides that where the parties to the suit are agreed as to the question of law or 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 on the issue the court may make certain orders specified in the rule. On the other hand Order 15 rule 7 provides that where the court is satisfied after making such inquiry as it deems proper that the agreement was duly executed by the parties and that they have a substantial interest in the decision of the question and the question was fit to be tried and decided, it shall proceed to record and try the issue and state its finding or decision on the issues in such manner as the issues had been framed by the court and shall upon the finding or decision of the issue, pronounce judgement according to the terms of the agreement. Upon pronouncing judgment, a decree shall follow.

I have carefully considered the provisions of law. The agreement of the parties as framed does not disclose a question that is fit to be tried or decided so as to dispose of the entire suit. The counsels assumed that the facts they agreed upon were sufficient for a trial of the agreed issues. However the submissions of the defendant's counsel which commenced the submissions amounts to objection to the plaintiff's suit. Secondly the defendant's point of law assumed some facts which were not agreed upon. This fact is that the basis of the business relationship between the parties involved a form of gaming or a game of chance. Secondly the parties assumed that the court has jurisdiction and that the subject matter of this suit is in Uganda. There is no agreement that the account was in cyberspace. Thirdly the parties assumed or are deemed to have assumed that the contract is governed by the laws of Uganda. Yet the agreement deals with trading in securities availed by a foreign company registered in Cyprus. There was strictly speaking no agreement in terms of Order 15 rule 6 of the Civil Procedure Rules between counsels. Such an agreement has to be in writing. Finally there are several factual gaps which need to be resolved by adducing evidence. I am not satisfied in terms of Order 15 rules 7 (c) of the Civil Procedure Rules that the issues agreed upon by the parties is fit to be tried and decided in the manner chosen by the parties in the joint scheduling memorandum. Such an agreement leads to disposal of the suit. Secondly the point of law raised by the defendants counsel further requires factual data which is unavailable to the court and it would be unjust to decide the case on the basis of the agreement on matters of fact. Because the case is not fit to be tried on the basis of the agreement of the parties on matters of fact, the suit shall not be tried on the basis of the agreement.

As far as the objection on the ground of illegality is concerned, it was not framed as an issue of pure law under Order 15 rule 2 of the Civil Procedure Rules. The issue as framed requires considerations of questions of fact as well as questions of law. This is whether there was breach of contract by the defendant and secondly whether the defendant is liable to refund to the plaintiff. Last but not least Order 6 rule 28 of the Civil Procedure Rules permits a party to raise by pleadings any point of law which may be set down for hearing and disposed of at any time before the hearing. Where the point of law substantially disposes of the suit, the court may proceed to dismiss the suit under Order 6 rule 29 of the Civil Procedure Rules. However a point of law which may be determined under Order 6 rule 29 of the Civil Procedure Rules should not include for determination any factual controversy. In the case of **NAS Airport Services Limited v The Attorney-General of Kenya [1959] 1 EA 53,** the Court of Appeal of East Africa sitting at Nairobi held that a point of law should not be determined if there is any question of fact in controversy that was necessary for its determination. In considering the provisions of the Kenyan equivalent of the Ugandan Order 6 rule 28 and 29 of the Civil Procedure Rules Windham JA held at page 58 as follows:

> "Clearly the object of the rule is expedition. But to achieve that end the point of law must be one which can be decided fairly and squarely, one way or the other, on facts agreed or not in issue on the pleadings, and not one which will not arise if some fact or facts in

issue should be proved; for in such a case the short-cut, as is so often the way with short-cuts, would prove longer in the end."

Clearly the Court of Appeal was of the view that where some facts in issue ought to be proved before the point of law can be determined the point of law should not be taken. The decision applies with full force in the circumstances of this case as there are several facts which should be proved before the issue of whether the contract was illegal can be determined.

In the premises, the point of law raised by the defendants counsel cannot be determined without proof of facts and is therefore stayed until after the parties have adduced evidence. The suit shall be fixed for hearing and determined on the merits after sufficient factual data has been adduced in evidence. Last but not least this ruling is without prejudice to the defendant raising any point of law as to whether the business which is the foundation of the plaintiffs claim contravened any laws of Uganda. Costs are costs in the cause.

Ruling delivered this 24th day of January 2014 in open court.

Christopher Madrama Izama

Judge

Ruling/Judgment delivered in the presence of:

Mukwaya Edward for the plaintiff

Gabriel Byamugisha For the defence

Plaintiff and defendant absent

Charles Okuni: Court Clerk

Christopher Madrama Izama

Judge

24/January/2014