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

MISCELLANEOUS CAUSE NO.21 OF 2014

MEGHA INDUSTRIES (U) LTD……
APPLICANT

VERSUS

COMFORM UGANDA LIMITED ……
RESPONDENTS

BEFORE: HON. LADY JUSTICE FLAVIA SENOGA ANGLIN

RULING

This application was brought under S.98 C.P.A S.33 Judicature Act and 0.52 rr1 and 3 of the C.P.R seeking orders set out therein. It was supported by the affidavit of Mr. Myres Mwesigye the Operations Manager of the Applicant Company.

There is an affidavit in reply deponed by Kajubi Muhamad, Legal Officer of the Respondent Company.

When the application was called for hearing on 25.08.14, Counsel for the Respondent raised preliminary objections regarding the competence of the application before court. Counsel submitted that the application was incompetently before court and is an abuse of court process.

The application, he argued indicated that it is a Miscellaneous Cause which is a suit on its own. However, the body of the application and prayers sought disclose that this is an application for contempt of court.

Further that an application for contempt of court is a Miscellaneous Application that has to stem from the original suit, whose orders the Applicant claims Respondent has violated.
It was then contended that making this an independent application makes it difficult for court to determine what the orders in the other suit which is not before court were.

That in as much as the application intends to punish the Respondent for violating court orders in C.S. 269/11, the procedure adopted by the Applicant is not sustainable.

And that, as far as C.S. 269/11 is concerned, through which Applicant is seeking to enforce orders made thereunder; Applicants filed a similar application in 25/14 Annexture C, before the Execution Division and the prayers sought there are similar to those before court now. The Execution Division Judge – made orders under the application as evidenced by the affidavit in reply and parties were advised to pursue C.S 02/14 at Jinja.

At this point, Counsel for the Applicant objected to the submissions, arguing that Counsel for Respondent was arguing the merits of the application but were overruled by court.

Counsel for the Respondent continued asserting that the issues before court will affect the Jinja suit and that cannot be tried by way of application.

He then prayed for dismissal of the application.

In reply, Counsel for the Applicants submitted that the objections were not relevant. The application, he stated, is to show that the Respondents are in contempt of a consent order and has nothing to do with trademarks and passing off; which is the substance of the suit in Jinja.

The application before the Execution Division Judge did not deal with the issue. The genesis of this application is C.S. 269/11 and

not the suit in Jinja. The issue to be dealt with by court is whether there was contempt of court.

The case of **Abi Enterprise vs. Orient Bank Misc. Appl. 516/2011** was cited in support. A similar objection was raised before the court and the trial judge overruled it on the ground that "***Under Article 126 of the Constitution, procedural matters are not to be considered at this stage. What is important is that parties are properly before court and court should look into the merits of the application."***

Further that the order from the Execution Division was advisory and the issues concerned a Temporary Injunction applied for in that court. The application was disposed of and parties were advised to file contempt proceedings.

And that since Counsel for Respondents applied to cross examine the deponents, all issues can be established thereby. It was prayed that the objection be overruled and the application heard on its merits.

Counsel for the Respondent in rejoinder, maintained his earlier submissions; emphasizing that there is a similar application already in existence; Misc. Appl. 125/14.

Further that the case of **Abi Enterprises vs. Orient Bank (Supra)** was distinguishable from the present case on the ground that, the application in that case was properly before court while the present application is improperly before court; while Article 126 (2) (e) of the Constitution cannot be used to erode clear rules of procedure. He maintained his earlier prayers.

After listening to the submissions of both Counsel and upon giving the matter the best consideration that I can in the circumstances, I find that I am more persuaded by the arguments of Counsel for the Applicants.

The reference to a Miscellaneous Application as a Miscellaneous Cause is indeed a mere technicality which is not fatal to the application. It is an error that can be corrected. More so as it is clear from the body of the application the kind of remedy the Applicant is seeking and that it arises from a suit where a consent judgment was entered by the parties.

Decided cases have established that "***substantive justice should be administered without undue regard to technicalities –*** Article 126 (2) (e) of the Constitution. ***And further that to deny a party a hearing should be the last resort of the court.***"

The procedural defect is curable by invocation of Article 126 (2) (e) of the Constitution. No injustice will be occasioned to any of the parties as the application will be heard.

The Constitution is the supreme law of the land and contrary to the submissions of Counsel for the Respondent can be invoked to cure the procedural defect.

It has also been emphasized by courts that rules of procedure are hand maidens of justice and not meant to defeat it. The procedural defect will accordingly be ignored. Counsel for the respondent will have a chance to cross examine the deponents of the supporting affidavit and all issues that may arise will be resolved in that manner. – See S.33 Judicature Act.

All other issues raised by Counsel for the Respondent can only be properly determined if the application is heard.

Application No. 125/14 – said to be pending at Jinja court is already disposed of. The application is properly by court and the objection is accordingly overruled for all the reasons stated herein. Main application should be heard.

Costs will abide outcome of main application.

FLAVIA SENOGA ANGLIN
JUDGE
28.08.14