

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

HCT - 00 - CC - MA - 0417 - 2014
(Arising out of Civil Suit No. 62 of 2014)

BOB KASANGO ::
APPLICANT

VERSUS

JOHN MATOVU ::
RESPONDENT

BEFORE: THE HON. JUSTICE DAVID WANGUTUSI

R U L I N G:

Bob Kasango, the Applicant filed this application under 0.36 Rule 11 & Order 52 of the CPR against John Matovu, the Respondent hereafter seeking this court to set aside the judgment in default and decree passed in CS 62/2014 entered on 30th April, 2014. He also seeks for an order of stay of execution of those orders pending the final disposal of this application.

The background to this application is briefly that in August 2011, the Respondent, who was entitled to payments from the Government of Uganda, more specifically Ministry of Public Service instructed the Applicant who was trading under the name and style of Marble Law

Firm to collect the said legal fees on his behalf from the Ministry of Public Service.

The total sum of recovery from the Ministry of Public Service was Ugx. 10,418,182,058/=. It was the Respondent's case that the Applicant did collect the money but only remitted a total sum of Ugx. 1,357,500,000/=, declining to pay the balance of Ugx. 9,519,537,878/=.

On the 14th June 2013, the Applicant in acknowledgment undertook to pay the debt whose origin had been in a judgment of HCCS 1029/1998 Charles Aboola & Ors V Attorney General. He undertook to pay the entire amount owed plus interest on or before 31st January 2014. This agreement is not disputed by the Applicant. The Applicant did not pay as promised. On the 5th February 2014, the Respondent filed a summary suit seeking recovery of the money with attendant costs.

On the 26th February 2014, the Applicant filed a notice of motion seeking unconditional leave to appear and defend the suit. The record indicates that it was fixed for hearing on the 30th April 2014. When the application came up for hearing on the 30th April 2014, neither the Applicant nor his advocate were in Court. Nobody held brief or informed Court of the reasons for his absence.

On application of the Respondent, the application for leave to appear and defend was dismissed for want of prosecution.

The Applicant therefore filed this application seeking Court to set aside the judgment in default. The application was supported by his affidavit giving reasons for his absence in Court.

In paragraph 5 he deposed that he had written to Court on 23th April 2014 seeking Court to stand over the Application to 3.00 p.m. of the same day. That he sought the adjournment to 3.00 p.m. because he was appearing before another Judge. That when he appeared at 12:00pm that day he was told the application had been dismissed.

He further submitted that in any case, the Notice of Motion was on record together with the supporting affidavit and the Court should instead of dismissing the application, have proceeded and considered it.

Objecting to the application, the Respondent deposed that the Applicant had never informed them that he would be away in another Court and that in any case, adjournments could not be done by letter. Furthermore that since the Applicant did not deny his indebtedness, there was no reason why the judgment should be set aside.

On the issue of adjournment, it is well established that adjournments by Counsel cannot be done through letters. **Accali Manzi V Nile Bank Ltd Kampala** (1994)1 KALR 123; **Uganda V Okongo & Anor** HCCS 6/2011.

If the Applicant wanted an adjournment he should have instructed Counsel to hold brief for him explaining the need for the adjournment instead of relying on letters.

The letter can therefore not be said to be sufficient ground to reinstate the application for leave to appear and defend.

I have however considered the fact that the sum of money involved is quite substantial and it would only be fair if the Applicant is given a chance to say something about it. This however must come with a condition. By the time the Applicant made the undertaking, he had received the payment. By the time he promised to refund the money, he was only declaring to the Respondent that it was available.

Nowhere in his application does he say that the money has been refunded to government. This was money he received in fulfillment of the judgment against the Attorney General which judgment still stands until it is set aside.

The fact that it has been referred to as a judgment unlawfully obtained does not vitiate it without a countermanding Court order.

In the premises, since the Applicant is in possession of the money he is directed to deposit in Court the whole sum of Ugx. 9,169,537,878/= as acknowledged in Paragraph 3 of the undertaking within 7 days hereof as a precondition of reinstating the application for leave to appear and defend.

Failure of which, this application will stand dismissed with costs to the Respondent.

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David K. Wangutusi
JUDGE

Date: 02/09/14