

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL DIVISION)
HIGH COURT MISECELLANOEUS APPLICATION NO. 860 OF
2014

(ARISING FROM HIGH COURT CIVIL SUIT NO. 756 OF 2013)

OPPORTUNITY BANK (U) LTD:.....

APPLICANT

VERSUS

MAAD ADVERTISING

LTD:.....RESPONDENT

BEFORE: THE HON. MR. JUSTICE. HENRY PETER ADONYO:

RULING:

1. Application:

***1: Ruling on Third party Notice by Hon. Justice Henry Peter Adonyo:
December, 2014***

This is an ex parte application brought under Order 1 Rule 14(1) and (2) of the Civil Procedure Rules by way of Chamber Summons. It seeks for orders for a Third Party Notice to issue against the respondent as a necessary party in High Court Civil Suit Number 756 of 2013 between Asege Winnie, the Plaintiff in the main suit and the Applicant/ Defendant in which the said Asege Winnie is suing the applicant for breach of her constitutional rights to privacy, passing off, misrepresentation and false endorsement, breach of confidence and unjust enrichment for the unauthorized and/or unlawful use of her image/photograph said to have been used in a campaign to promote and market a product called “Agro Save Account” in eastern Uganda under the National Agricultural Advisory Services (NAADS).

The application is supported by an affidavit of Mr. Kabiito Karamagi an advocate practicing with M/s Ligomarc Advocates dated 25th day of September, 2014 and the grounds in support of it are that the Applicant engaged the respondent for its technical expertise to develop a product. The respondent represented to the applicant that it had taken all the necessary legal steps to develop creative ideas and designs to promote its agro save

2: Ruling on Third party Notice by Hon. Justice Henry Peter Adonyo: December, 2014

account product, that the respondent represented to the applicant that it had developed a good concept to promote the agro save account and that it had acquired the rights to use the material for the promotional products thereby inducing the applicant to pay for and utilize the said materials for which it is now being sued and that it is in the interest of justice that this application be granted.

2. Representation and hearing:

During the hearing of this ex-parte application in chambers , Ms. Annette Mwebaza of M/s Ligomarc Advocates presented the case of the applicant in this matter and read the said affidavit of Mr. Karamagi as well as citing a decision in a ruling by my learned sister Hon. Lady Justice Hellen Obura in the case of NBS Television Ltd. v Uganda broadcasting Corporation, HCMA No. 421 of 2012 (arising from HCCS No. 246 of 2012).

3. The Law and resolution of this Application:

This application is brought under Order 1 Rule 14 of the Civil Procedure Rules which empowers this honourable court to grant

3: Ruling on Third party Notice by Hon. Justice Henry Peter Adonyo: December, 2014

leave to a defendant who claims that it is entitled to contribution or indemnity by a third party, who is not a party sued in the main suit to have joined such third party.

The position of the law relating to third party notice was well explained in the case of **M/s Panyahululu Co. Ltd v M/s New Ocean Transporters Co. Ltd. and Others HCCS No. 523 of 2006** by Bamwine, J. (as he then was) who referred to an earlier decision in **DSS Motors Ltd v Afri Tours and Travel Ltd. HCCS No.12 of 2013**. In which the learned judge had this to say;

“...I understand the law to be that in order that the third party be lawfully joined, the subject matter between the third party and the defendant must be the same as the subject matter between the plaintiff and the defendant and the original cause of action must be the same. In other words the defendant should have a direct right to indemnity as such, which right should have, generally, if not always, arise from a contract which is express or implied...”

4: Ruling on Third party Notice by Hon. Justice Henry Peter Adonyo: December, 2014

This same position was followed in the case of **NBS Television v UBC High Court MA No. 421/2012** where Hon. Lady Justice Hellen Obura when in granting the application before her made direct quotation of the learned judge's ruling after observing that a third party be joined to the original on noticing that the cause of action in the matter before her was the same.

Applying the above holding to the instant matter, it was submitted as seen from paragraph 4 of affidavit in support of this application that the applicant contracted the services of the Respondent to provide a product on the basis of its technical and professional competence to design, lay-out and produce appropriate materials. A copy of the said service agreement was annexed to the Affidavit in support and marked "A". Further in paragraph 5 of the affidavit in support of this application, it is deposed that the respondent presented a finished product to the applicant and did not disclose any limitation to the use of the materials / photographs contained in the same which are the subject matter in the litigation between the applicant and Asege Winnie, the parties in the main suit.

5: Ruling on Third party Notice by Hon. Justice Henry Peter Adonyo: December, 2014

In comparison with the NBS case above, I find that this application is at fours with it since clearly there is ample connection between the applicant, the respondent and the plaintiff in the main suit all bound by a similar cause of action, that is the contract where the respondent was engaged to provide media related services which product was produced and is said to have been handed over to the applicant which the Plaintiff in the main suit is aggrieved of.

Having considered the attached documents to the affidavit in support of this application, particularly Annexure "A" which is the service agreement which in my view confirms the allegations made by the applicant that it is the basis upon which it is being sued in that the applicant contracted for a media service which media service was produced with images and photographs which are the subject matter of contention in the main suit, I would be constrained to believe that indeed the basis of this application connects the applicant, the respondent and the Plaintiff in the main suit and hence giving rise to similar cause of action.

On the basis of the contract and taking into account the clear provision of the law in this respect and the several decisions of this court in similar matters, I would find that the subject matter

6: Ruling on Third party Notice by Hon. Justice Henry Peter Adonyo: December, 2014

between the applicant and the third party and between the plaintiff and the applicant all relate to the media product which is the subject matter of the main suit. For the reason given above, I am convinced that this is a proper case where a third party notice should issue so that the dispute inherent in this matter is resolved once and for all.

4. Orders:

In the circumstance therefore, I am inclined to grant the leave sought by the applicant for third party notice to issue to the respondent and I hereby do so accordingly.

The said notice ought to be filed with this court within ten (10) days from the date of this ruling.

I do so order accordingly.

Henry Peter Adonyo

Judge

***7: Ruling on Third party Notice by Hon. Justice Henry Peter Adonyo:
December, 2014***

22nd December, 2014

22.12.2014

In Chambers:

M/s Mwebaza: For Applicant

Mr. Walutsyo: Court Clerk

Mwebaza: My lord, this matter is for ruling.

Court: Ruling is ready and it hereby delivered.

Orders made accordingly.

Henry Peter Adonyo

Judge

22.12.2014

***8: Ruling on Third party Notice by Hon. Justice Henry Peter Adonyo:
December, 2014***