

**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA AT KAMPALA**

**COMMERCIAL DIVISION**

**HIGH COURT CIVIL SUIT ORIGINATING SUMMONS NO. 003**

**OF 2014**

**SESAM ENERGETICS 1 LTD:.....**

**APPLICANT**

**VERSUS**

**ELECTRICITY**

**REGULATORY**

**AUTHORITY:.....RESPONDENT**

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

**RULING**

**1: BACKGROUND**

This ruling arises from a preliminary objection to the originating summons taken out by the Plaintiffs against the Defendant. The Defendant submitted that the suit was incompetent because it was brought by originating summons instead of being brought

under the ordinary procedure of the suit. Both parties filed written submissions which are on record and have been duly considered.

## **2. ISSUE FOR DETERMINATION**

The issue for determination before this honourable court at this stage is whether the dispute is properly brought to court by way of an originating summons. My reading of pleadings in the instant matter is that the Plaintiff is bringing for the interpretation of **The Electricity (License Fees) Regulations, 2003 SI 20//2003** and **The Electricity (License Fees) (Amendment of Schedule) Instrument 2011 SI 24/2011** to determine their legality.

In law, Originating Summons is provided for by Order 37 of the Civil Procedure Rules. For avoidance of doubt, I will cite here;

**Order 37 Rule 6 of the Civil Procedure Rules** provides as follows:

*“Any person claiming to be interested under a deed, will or other written instrument may apply in chambers by originating summons for determination of any question of construction arising under the instrument and for a declaration of the rights of the persons interested.”*

My reading of the said rules show that it lists out the instances when originating summons may be utilized and these appear to be limited. Briefly said therefore, it can be safely stated that

originating summons are envisaged in matters to do with determination of issues of trust, administration of estates, sale and purchase of land, mortgage, dissolution of partnerships which I do believe limits its scope since the laid out categories cannot be by any imagination stretched and hence no room by the rules themselves is given for other matters to utilize it.

Arising from the definition above, it necessary to try to unpackage those specific used in the rule and these include the use of the word “**construction**”, which is the act or process of discovering and expounding the meaning and intention of the authors of the law with respect to its application to a given case, where the intention is rendered doubtful either by reason of apparently conflicting provisions or directions, or by reason of the fact that the given case is not explicitly provided for in the law."

**See: Henry Campbell Black, *Handbook on the Construction and Interpretation of Laws 1 (1896)***

Then there is term “**written instrument**” which I believe when interpreted *e jusdem generis* then it must be restrictively made to apply to classes of the matters as stated therein i.e. wills and deeds as was held in the case of **Bhari versus Khan [1965] EA 95**. This to me shows that the extent of inquiry to be made based on an Originating Summons is very limited.

On further analysis, I find that Order 37 Rules 6 of the Civil Procedure Rules by itself discloses pertinent ingredients which must be tested. The first of which is that there has to be a person

claiming to be interested under a deed, will or other written instrument and secondly, that the originating summons is being sought to be used for the determination of a question of construction arising under the instrument in issue. It seems to me that the term "**instrument**" encompasses all categories of instruments mentioned under Order 37 Rule 6 of the said Rules. The other matter to consider as a third question would be the question of construction which must result into a declaration of the rights of the person interested in the construction of the instrument. And then fourthly, the person utilizing an originating summons for determination of questions of construction must also have an interest in the outcome of the question.

This therefore means that the issues as to questions of construction for matters which are provided for under Order 37 Rule 6 of the Civil Procedure Rules can only arise when there is a controversy as to the meaning, scope, purpose, intention, ambit or application of the instrument or any part thereof. The purpose of construction is to have the correct meaning, purpose, scope, intention, ambit etc applied in the interest of persons having an interest in the question of construction. This is because, firstly, there has to be a person claiming to be interested under a deed, will or written instrument. The operating words as far as this provision is concerned are "**written instrument**". The person claiming must claim an interest under the written instrument. The term "written instrument" is construed *e jusdem generis* as being of the nature of things such as deeds or wills, powers of attorney

or other written instruments. It is hard to conceive whether legislature intended it to be applied to an application to interpret a law and have not used the terms *Act of Parliament* or *provision of any law*".

It should be remembered that the words *written instrument* are not defined by the Civil Procedure Act, neither is it defined by the Interpretation Act Cap 3 of the laws of Uganda. But on the other hand the word "**statutory instrument**" is defined under Section 14 of the Civil Procedure Act to mean powers conferred by an act of Parliament and exercised by the President, a Minister or any other authority to make proclamations, rules, regulations, by laws, statutory orders or statutory instruments, any document by which that power is exercised is to be known as a statutory instrument.

Secondly, rule 6 of Order 37 envisages a tangible interest under an instrument such as a power of attorney.

It is therefore not legally possible to read under the words "**any other written instrument**" in an Act of Parliament or Statutory Instrument to mean more than that what is provided for in the law itself. In my view, which rhymes with the holding of the court hereunder, there must be a kind of right or interest conferred by the document or written instrument giving a standing to the applicant to invoke Order 37 rule 6 of the Civil Procedure Rules. **See: Pearl Impex Uganda Ltd versus Attorney General and Kampala City Council HCCS 3 of 2011.**

When all the above is related to the instant matter, it my considered opinion that this is a matter that fall short of what I have earlier labored to explain as it is a matter neither for interpretation of a deed, will nor any instrument as envisaged under the aforementioned rule.

It is therefore my conclusion that the questions raised by the Plaintiffs are not questions of construction of any other instrument. Secondly, I have no doubt that the words "or other instrument" under order 37 rule 6 do not include a Statutory Instrument. The words "**or other instrument**" purported to be called into action a here would, in my view, have to be construed *e jusdem generis* as referring to things such as wills, deeds and other such private documents. It does not refer to a Statutory Instrument.

In the instant matter, I find that there is no question of construction of the said instruments which require me to interpret as they do not fall under those listed in the rules above thus rendering the use originating summons as instrument to move this court to be inappropriate for handling the questions framed therein.

Indeed, I do acknowledge that the objection of the Defendants in this matter relates purely to the appropriateness of the procedure used but as far as remedies are concerned, it is apparent that the intended action of the Plaintiff of public interest and may affect numerous persons in Uganda.

All in all, I concur with the uneasiness of the defendants that the choice of the use of an originating summons is not in the public interest as the technicality of the matter requires the use of proper procedure to ensure that the issue is clear and properly handled.

As such I would find that the use of an originating is not the proper one and in the premises I would be constrained to strike it out with no order as to costs.

Before I take leave of this matter, I must note that several bodies disassociated themselves from this action by the Plaintiff clearly showing lack of cohesion in the use and choice of the current adopted procedure and consultation which in my opinion should have been carried out first before the matter was hurriedly brought to this court.

### **3. Order**

This Originating Summons is striked out with no order as to costs.

**Henry Peter Adonyo**

**Judge**

**7<sup>th</sup> July 2014**