

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

HCT - 00 - CC - MA - 942 - 2013
(Arising from HCCS No. 606 of 2003)

CTM (U) LIMITED ::::::::::::::::::::::::::::::::::::::::::::::::::::
APPLICANT

VERSUS

SEKO LOGISTICS LTD ::::::::::::::::::::::::::::::::::::::::::::::::::::
RESPONDENT

BEFORE: THE HON. JUSTICE DAVID K. WANGUTUSI

RULING

This is an application brought by way of Chamber Summons under Order 22 Rules 26 and 89 of the Civil Procedure Rules and Section 98 of the Civil Procedure Act. It seeks for orders that the execution of the Consent Decree / Judgment in Civil Suit No. 494 and Misc Applications 749 and 750 of 2013 be stayed pending the hearing and determination of Civil Suit No.606/2013.

In brief the grounds upon which the Application is made are that the Respondent is in possession of 8 containers which it was supposed to deliver to the Applicant

and also in possession of the Bills of lading for these containers. That the Applicant has sued the Respondent vide Civil Suit 606/2013 for breach of contract to wit failure to deliver the containers whose estimated market value is approximately UGx 560,000,000/=

The Applicant sued the Respondent on 28 August 2013 in Civil suit 494/2013 for specific performance by way of delivery of the Applicant's cargo in 3 containers, breach of contract and damages. A consent judgment was entered on 10th September 2013 and a decree extracted. In this consent judgment, it was agreed that the Applicant pay the Respondent a sum of \$ 20,000 USD as part payment of an outstanding sum leaving a balance of \$ 34,589.90 which was to be paid after the Respondents delivered the 3 containers to the Applicant's premises. The 3 containers were delivered to the Applicants; however the \$ 34,589.90 remains outstanding.

The consent is neither denied nor challenged.

There is no doubt that more 8 containers were to be transported, all based on an understanding between the two parties. The Applicant believes that the goods comprised in these are in possession of the Respondent. Going by the reply to the Application, it is clear that the Respondent is aware of the whereabouts of the goods. This is not to say that we find it liable for those goods. The decree that is intended to be stayed involves the same parties as those in Civil Suit 606/2013.

It is my view that this suit is no different from the case of **Oryema Boniface V Uganda Muslim Supreme Council HCCS 1238 of 1988** where in the court held that where an application is covered under Order 19 Rule 26 (now Order 22 Rule 26) the court would not need to apply its inherent jurisdiction under Section 98 of the

Civil Procedure Act because such a situation was catered for as follows, namely that;

“... Where a suit is pending in any court against the holder of a decree of the court in the name of the person against whom the decree was passed, the court may, on such terms as to security or otherwise, as it thinks fit, stay execution of the decree until the pending suit has been decided...”

Provisions such as this one are intended to minimize multiplicity of suits and much so multiplicity of executions. Such was the holding in **Iddi Halfani V Haisa Binti Athumani (1962) EA 761** where in the court, dealing with similar provisions as those in Order 22 Rule 26 was of the view that the order referred to did not impose any condition regarding the nature of the pending suit or the effect of a stay of proceedings granted under the rules as regards adjustment of claims or prevention of multiplicity of execution proceedings.

The court went further to say that the only requirement would be a pending suit which meant any kind of suit brought by the unsuccessful, in this case the Applicant, against the successful party which in this case would be the Respondent.

The sums of money involved in the suit are big enough to off set the \$34,589.90 USD should the Applicant succeed in the suit. For the above reasons, I would find this a fit and proper case wherein a stay of the execution of the consent decree would be granted with the following conditions:

1. That the Applicant deposits in this court a total of \$34,589.90 USD which it owes to the Respondent within 10 days from the date of this ruling.
2. That this file goes to mediation which mediation should be completed within 30 days.
3. That in the event of failure of settlement, this suit be expeditiously handled and finalized within 60 days from the date of filing mediation results.

The costs of this application will abide in the main suit.

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David K. Wangutusi

JUDGE

Date: 23 - 01 - 2014