THE REPUBLIC ODF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

COMMERCIAL DIVISION

HIGH COURT MISCEALLANEOUS APPLICATION NO.102 OF 2015

STEEL ROLLING MILLS LTD……APPLICANT

VERSUS

HABIB OIL LTD……..……RESPONDENT

BEFORE HON. JUSTICE HENRY PETER ADONYO:

RULING:

1. **Background:**

This is an application brought by way of notice of motion under Sections 82 and 98 of the Civil Procedure Act, Order 46 Rules 1 (b) and 8 and Order 52 Rule 1 of the Civil Procedure Rules seeking for orders that the Consent Judgment in Civil Suit No. 459 of 2013 entered on the 24th day of November 2014 be reviewed and provisions be made for the cost of this application to be in cause.

The application is supported by an affidavit of one Mr. Hussein Hilal which itself sets out the grounds under which the application is brought before this Honourable Court.

2. **Grounds for this Application:**

The grounds is support of this application as contained in the affidavit in support are briefly that the term under the Consent Judgment that the Applicant would on default of payment of the sums agreed upon attract an interest of 19% is not clear and or vague for the term does not provide as to whether said interest accrues on monthly or annual basis thus the ambiguity,

mistake and error resulting into the Respondent taking advantage of the Applicant and that it was in the interest of justice that this application is allowed.

3. **Submissions:**

At the hearing of the application Mr. Barya Musa appeared together with Mr. Owen Mulangira as counsels of the Applicant whose legal representative was also in attendance in court and Mr. Gilbert Nuwagaba appeared together with Ms. Caroline Aparo as counsels for the Respondent.

In his submissions Mr Barya pointed out that there was a mistake on the Consent Judgment was in regards to paragraph 4 which did not clearly indicate whether the indicated 19% interest was monthly or annual for he contended that according to Webster's **New World Dictionary page 704** interest is calculated based on unit of time which was lacking in the instant matter implying that there is thus no interest to be charged or complied with. Learned counsel requested the court to note that it was even the policy of the courts that interest are charged per annum meaning that where a consent judgment shows interest and is endorsed by court and the parties where the nexture of per annum was missing then that would be an illegality and yet it is trite law that once an illegality is brought to the attention of a court then a court cannot sanction such an illegality.

In addition to this submission, learned counsel went on to add that though a consent judgment can be upheld by the courts generally where there is fraud, mistake or contravention of court policy then it ought to be discarded and he cited the authority of **AG and Uganda Land Commission v J. M. Kamoga and Anor [2004] S.C.C.A** to reinforce this argument.

On the other hand Mr. Nuwagaba, learned counsel for the Respondent in his response urged the court to ignore the application and not grant it since the Applicant cannot be said to be an aggrieved party within the meaning of **Order 46 Rule 1 (b) of the Civil Procedure Rules** and **Section 82 of the Civil Procedure Act** for the Applicant was party to the consent judgment and based on the authority of **A.G and Uganda Land Commission** cited by counsel for the Applicant, the court would find that basing on the principles outlined in **Hirani v Kassam [1952] EA 131** there could be no mistake at all in regards to the fact that the interest of 19% was indicated on the consent judgment was only apply on the occasion of a default and not in any other situation thus making it self- executing with no anomaly at all.

4. **Resolution:**

Section 82 of the Civil Procedure Act and Order 46 Rule 1(b) Civil Procedure Rules are the laws cited to fortify the Applicant's case that it was an aggrieved party. The respondent similarly utilizes the same to state that the Applicant was not aggrieved. The provisions of the law under **Section 82 of the Civil Procedure Act** are reproduced below for avoidance of doubt:-

Section 82 of the Civil Procedure Act reads as follows;

> **"Any person considering himself of herself aggrieved … may apply for review of a judgment to the court…"**

Relating this provision of the law in regards to the position taken by learned counsel for the Respondent it would appear that he is taking the position that was considered by the Court of Appeal in the case of **J.M. Kamoga and Anor vs. A.G and Uganda Land Commission C.A.C.A No.74 of 2002** where the learned Justice Byamugisha J.A stated a party can only be aggrieved within the meaning Order 46 rule 1 of the Civil Procedure Rules and Section 82 of the Civil Procedure Act where there is no consent for even under Section 67 of the Civil Procedure Act no appeal was permitted where there is a consent decree. While I find that this reasoning seems to factually and legally correct, it is not legally binding and correct as argued by learned counsel for the Respondent that a party who consents to a decree cannot be by any iota of interpretation be considered as aggrieved by that consent decree for in my view a party against whom a consent decree is passed may notwithstanding the consent be wrongfully deprived of its legal interest if for example the consent was induced through illegality, fraud or mistake. Thus the applicability of **Order 46 of the Civil Procedure Rules** and **Section 82 of the Civil Procedure Act** would equally apply to such a party whether he or she made such a consent for to hold otherwise would create a totally negating impression that a party who consents to an illegal decree should be assumed not to be aggrieved by it which in my view cannot be the case and this position of mine seems to been in at fours with that which was held by Mulenga, JSC in the case of **A G and Uganda Land Commission v J M Kamoga and Anor, S.C.C.A. No.8 of 2004.**

Thus having said so, I would conclude and make findings in relations to the instant matter that an Applicant who consented to a judgment can similarly be considered to be an aggrieved party within the meaning of the rules cited above so long as the negative indicators cited above are true

in such consent. Thus since the instant applicant raises the issue that there was the possibility of illegality in the consent it was stated to have signed, this court would be left with no alternative but to consider it as an aggrieved party within the meaning of the authority of the laws cited.

Having made the above findings I would thus to the main gist of this application for in this matter it was submitted by learned counsel for the Applicant that the consent judgment ought to be reviewed since there was a mistake on its face in addition to it being against the court's very own policy for it provides for interest which was neither catagorised as to be charged monthly or annually with this contention arising from the paragraph 4 of the said consent judgment thus being so it should be found to be a mistake or contrary to court's own policy for the Supreme court when considering the case of **AG and Uganda Land Commission v J.M. Kamoga and Anor [2004] S.C.C.A** cited with approval the holding in the case of **Hirani vs. Kassam [1952] EA 131** and went on to make findings that :-

> "**prima facie, any order made in the presence and with consent of counsel is binding on all parties to the proceedings or action, and cannot be varied or discharged unless obtained by fraud or collusion or by an agreement contrary to the policy of the court … or if the consent was given without sufficient material facts, or misapprehension or in ignorance of material facts, or in general for a reason which would enable a court to set aside an agreement**."

From this holding of the Supreme Court it is apparent that it is now a well settled principle that a consent decree will be upheld unless it is vitiated by reasons that there is evidence of fraud, mistake, misapprehension or contravention of court policy.

It was argued as relating to the instant matter that indeed there was a mistake on the consent judgment which qualifies it to be set aside or if not corrected or amended for it did not make provisions as to whether the interest indicated in its paragraph 4 being chargeable monthly or annually.

The word **Mistake** is defined under the **Black's Law Dictionary, 2nd Edition Online** to mean;

> "**Some unintentional act, omission or error arising from ignorance, surprise, imposition or misplaced confidence**."

The provisions of Paragraphs 3 and 4 of the Consent Judgment are reproduced hereunder;

> "**3. In the event of default on any of the installments above stated, the entire outstanding amount shall immediately become due and payable and the plaintiff shall be at liberty to take out execution proceedings.**
>
> **4. upon default, the sum due and immediately payable under clause 3 above shall attract interest of 19%."**

From the perusal of these paragraphs it would appear that the phrases used in the agreement speak for themselves for they ordinarily seem to convey the which in my view were understood by the parties more so the Applicant for they not only consented to the said provisions but went ahead to execute the said agreement as the first installment was made in cognizance with the provisions of the said agreement.

It would appears to me that the insertion 19% as being a default occurrence was not an unintentional act by the parties for I find that no proof has been brought to indicate that the parties and more so the Applicant was ignorant of this provision for the Applicant actually went ahead to pay the first installment of Ug. Shs 84,566,700 on the 12th of November, 2014 in proof of its willingness to comply with the terms and provisions of the said consent agreement and this is seen from the Annexture to the affidavit in reply to this application which marked "A" and it is apparent that before this action of making the first installment the applicant found it convenient to comply with the terms of the consent agreement and in fact never raised any concern before then.

I would therefore tend to agree with learned counsel for the Respondent that the mistake claimed by the Applicant was no mistake at all but an afterthought by the Applicant who would want to claim at this late stage innocence of the provisions of the said consent agreement yet it took steps to implement the same willingly an indication that the indicated interest was agreed by the parties as being one which was enforceable on default of the terms of the agreement by the Applicant and not otherwise as the Applicant's very act of paying the first installment seems to suggest to me that the Applicant was not taken by surprise by that very provision and could therefore not be said to have been ignorant of those very provisions contained in paragraphs 3 and 4 of the said consent judgment. Thus this finding would allay all pretentions to the

contention that there was a mistake on the record and neither would there be consideration had to it that the same was or should be seen to be against the court policy for the stipulations in those paragraphs are self executing as they are clear and no objection was made before the initial implementation of the same by the applicant from the very beginning.

I would therefore conclude that this application lacks merits for I find that there is no mistake on the face of the consent judgment to warrant my interfering with the same for no proof has been adduced that paragraph 4 was an unintentional insertion into the agreement through an act or error arising from ignorance or surprise on the part of either party.

5. <u>Orders:</u>

In the circumstances I would find that the consent judgment does not contain any errors on its face and neither does it manifest anything which is against the court policy as such making me believe that this application was brought by the Applicant for purposes other than stated which in my view was to try to extricate itself from the very clear agreement it entered into which had no interpolations at all but to buy time which I view as an abuse of the court process and thus I would be constrained to dismiss this application with the contempt it deserves with costs.

I do so order accordingly.

HENRY PETER ADONYO

JUDGE

12TH MAY, 2015