

IN THE HIGH COURT OF UGANDA AT KAMPALA

[COMMERCIAL DIVISION]

MISCELLANEOUS APPLICATION No.632 OF 2015

[Arising From Civil Suit No. 221 OF 2014]

- 5 **1. EKISA GEORGE**
 2. OМУKENYI GEORGE COSMOS

VERSUS

- 10 **1. BANK OF AFRICA (U) LTD**
 2. BANK OF BARODA (U) LTD
 3. BARCLAYS BANK (U) LTD
 4. CAIRO INTERNATIONAL
 5. CENTENARY BANK (U) LTD
 6. CRANE BANK LIMITED
15 **7. DFCU BANK (U) LTD**
 8. DIAMOND TRUST BANK
 9. ECO BANK LIMITED
 10. EQUITY BANK (U) LTD
 11. UGANDA FINANCE TRUST (U) LTD
20 **12. HOUSING FINANCE TRUST BANK (U) LTD**
 13. KENYA COMMERCIAL BANK

 14. GLOBAL TRUST BANK

 15. OPPORTUNIY BANK

 16. ORIENT BANK

25 **17. POST BANK**

 18. STANBIC BANK
 19. STANDARD CHARTERED BANK
 20. TROPICAL BANK
 21. UNITED BANK OF AFRICA

30 **BEFORE: HON. MR. JUSTICE B. KAINAMURA**

Ruling

This is an application seeking declaratory judgment under O. 13 r.6 and O. 15 r.2 CPR. The application was brought by way of Notice of Motion and is supported by the affidavit of Omukenyi George Cosmos.

5 The brief facts of the case are that the applicant sued the respondents for recovery of bank deposits charges being money had and received over the years. When this matter came up for hearing, Counsel for plaintiffs applied to court to enter judgment on admission for the plaintiff.

10 The grounds for the application are that the respondents admitted to charging the contestable bank charges. Further that, court's ruling on this issue has high chances of disposing off the entire suit thereby saving court time and un necessary dilatory litigation and that it would be in the interest of justice if court made a ruling on legality of the admissions.

15 The applicant asserts that the respondents have admitted to charging and or continue to charge bank charges against the applicants and members of the public under the pretext that the law does not prevent them. Further the applicants pray that the court permits them to make legal submissions regarding the illegality of the respondent's/ defendant's charges, where after, the respondents should rebut and court makes a declaratory ruling and or judgment as to whether or not the charges are legal or illegal.

The respondents all assert that there were no admissions made as to the legality of the charges.

I have read the submission of all Counsel and considered the grounds in support of the Notice of Motion.

20 **Order13 r.6 CPR** provides that;

25 *“Any party may at any stage of a suit, where an admission of facts has been made, either on the pleadings or otherwise, apply to the court for such judgment or order as upon the admission he or she may be entitled to, without waiting for the determination of any other questions between the parties; and the court may upon the application make such orders, or give such judgment, as the court may think just.”*

It is an established principle of law that the admission has to be clear and unambiguous and must state precisely what is being admitted.

In the case of ***Kibalama Vs Alfasan CVBA [2004] 2 E.A 146, (CAU)*** court held;-

That under order 11 rule 6, the judgment can be entered at any stage of the suit where an admission of facts has been made. Such admission however must be unequivocal in order to entitle the party to the judgment without waiting for the determination of any other question between the parties”.

In the case of ***Kamugisha Lennard Vs Uganda Revenue Authority Hccs No. 311 of 2012,*** court held that;-

“The provision allows any party at any stage of a suit to apply for judgment on admission. The application is made where either in the pleadings or otherwise an admission of facts has been made. The word "otherwise" is broad enough to include a letter, oral testimony, scheduling memorandum etc. Secondly the party applying must be entitled to judgment upon the admission. Thirdly the application may be made at any stage of a suit. The application is made without prejudice to the determination of any other question between the parties. Lastly the rule gives the court discretionary power to enter judgment as the court may think just. It is now trite law that an admission has to be unequivocal and must admit a claim in the suit”.

Black Law Dictionary 9th Edition defines “unequivocal” as unambiguous, clear, free from uncertainty. In my view it is not true that the respondents have made any admissions to the plaintiff’s claim in the main suit. The only alleged admissions go as far as the collective charge made and that is not the claim in the main suit. For the court to exercise its discretion to give a judgment on admission, the admission must be in regard to the claim and not merely just an admission to a fact in the pleadings. There is therefore no unequivocal admission to the claim in the suit.

It is also my view that the applicants pray or that the court permits the applicant’s to make a legal submissions regarding the illegality of the respondents/ defendants charges is misguided. **Section 22** of the **Evidence Act** is to the effect that ***facts which are admitted need not to be proved.*** The admissions must be sufficient requiring no further proof. The admission to the collection fee is insufficient to dispose off the entire suit as required by the law. There is need to

hear evidence so as to determine the factual justification for the respondents levying the fee. I agree with Counsel for the 1st to 11th, 14th, 18th and 21st respondents that to contend, as Counsel for the applicants has, that by admitting that a collection fee is levied, the respondents are now barred from leading evidence on the justification for the levy is curious and clearly incorrect in law.

Accordingly this application is dismissed with costs.

10 **B. Kainamura**
Judge
19.12.2016