

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
[COMMERCIAL DIVISION]
CIVIL SUIT No. 398 OF 2014

5 **TORORO PROGRESSIVE ACADEMY LIMITED :::::::::::::::::::: PLAINTIFF**

VERSUS

1. DFCU LIMITED

2. BANK OF UGANDA :::::::::::::::::::: DEFENDANTS

BEFORE: HON. MR. JUSTICE B. KAINAMURA

10 **RULING**

This ruling is in respect of preliminary objections raised by Counsel for the defendants in their written statements of defence, following a suit instituted by the plaintiff for damages for fraud, breach of contract and negligence/unjust enrichment.

Brief Background

15 The 2nd defendant, as implementing agent of the Government of Uganda, was granted conditional loans by the European Investment Bank for the purpose of financing small and medium sized private sector investments by private Companies in Uganda. The 2nd defendant engaged Approved Intermediaries, including the 1st defendant, to lend the funds to final beneficiaries and the plaintiff was one of such beneficiaries. Under the said global loan
20 agreements, the loan amounts would be availed to an Approved Financial Intermediary (AFI) pursuant to a letter of participation which would regulate the relationship between the AFI and the 2nd defendant. Therefore, the 1st and 2nd defendant executed a Participation Letter in that regard.

However, the actual disbursement of the Apex loan funds from the European Investment
25 Bank exceeded the expected period of disbursement. On the application of the plaintiff, the 1st defendant offered the plaintiff and the plaintiff accepted an Apex loan facility of UGX 350,000,000/= and the 1st defendant accepted to disburse the said loan within six months from the date of acceptance of the offer by the plaintiff. Disbursement of the said apex loan was delayed and not done within the agreed six months; the plaintiff then sought and was

given a bridge loan of UGX 100,000,000, at an interest of 19% per annum by the 1st defendant. The plaintiff later further requested and was granted by the 1st defendant a further bridge loan of UGX 250,000,000/= at an interest of 19%.

In 2013, the plaintiff allegedly discovered fraud against it by the 1st defendant in respect of the above transactions, *interalia*, interest charged and collected; concealment of material information; introduction of bridge financing not permitted under the scheme. As a result, the plaintiff instituted a suit against the defendants jointly and severally for damages suffered as a result of the above actions.

In their written statements of defence, the defendants raised preliminary objections which were all summarized into the following issues at the scheduling conference:-

1. *Whether the plaintiff has locus to sue on the terms of the agreement between the 1st defendant and the 2nd defendant.*
2. *Whether the plaintiff's suit is res judicata.*
3. *Whether the plaintiff's suit is time barred.*
4. *Whether the plaintiff's suit is defective for being brought against an agent of a disclosed principal.*
5. *Whether the plaint discloses a cause of action against the 2nd defendant who was neither party to nor privy to the lending contracts between the plaintiff and the 1st defendant.*
6. *Whether the suit is an abuse of court process to the extent that it seeks a declaration that the Consent Settlement of September 28th 2012 in **HCCS 007 of 2012, Tororo Progressive Academy Vs DFCU Ban (U) Ltd** is nullified and set aside.*

Counsel for either side filed written submissions in support of and in opposition of the preliminary objections respectively. Counsel for the 1st and 2nd defendant's filed joint submissions and argued the points of objection in the same order in which they appear above, except that points 1 and 5 were argued together. I shall address the points of law in that order;-

Issue 1 & 5: Whether the plaintiff has locus to sue on the terms of the agreement between the 1st defendant and the 2nd defendant, and whether the Plaintiff discloses a cause of action against the 2nd defendant who was neither a party to nor privy to the lending contracts between the plaintiff and the 1st defendant.

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In their written submissions, Counsel for the defendants submitted that in as far as the relationship between the 1st defendant and the 2nd defendant was governed by a Participation Letter to which the plaintiff was not a party, it did not have the locus to sue on its terms. Counsel relied on *Dr.Vincent Karuhanga t/a Friends Polyclinic Vs National Insurance Corporation & anor HCCS No.617 of 2002* and *Among Mary Gorretti Vs Tracks International Limited, HCCS No.280 of 2010*, and further submitted that a contract could not give rights or impose obligations on anyone who was not a party to it regardless of the fact that its provisions were intended to benefit him/her.

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Counsel made reference to the plaintiff’s pleaded assertions that the 2nd defendant failed to monitor/supervise the apex loan scheme, that it refused to act on the plaintiff’s complaint against the 1st defendant and that the 1st defendant withheld vital information about the apex loan scheme including the chargeable interest. In Counsel’s view, all the above assertions related to the obligations and duties owed between the 1st and the 2nd defendants. Further, that it was immaterial that the plaintiff was a beneficiary and that the Participation Letter did not expressly permit the plaintiff to enforce it, nor was the plaintiff expressly identified as one of the beneficiaries.

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In reply, Counsel for the plaintiff submitted that the action was not founded on the Participation Letter. Counsel made reference to the plaint and contended that the action was based on the 1st defendant’s breach of its fiduciary duty when it did not disclose material facts to the plaintiff and the cause of action in negligence as pleaded against the 2nd defendant, were all not founded on the Participation Letter.

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In rejoinder, Counsel for the defendants submitted that by the plaintiff making reference to the Participation Letter in its pleadings, it was evidence that it was relying on the same.

Further, that the submission that the plaintiff was suing on breach of banker customer relationship was an afterthought since it had not been pleaded as a cause of action.

I have carefully perused the pleadings and considered the submissions of Counsel on the above point of law raised by Counsel for the defendants.

- 5 I accept the submission of Counsel for the defendants that by virtue of the common law doctrine of privity of contract, a contract does not usually give rights or impose obligations on a person who was not a party to the contract regardless of the fact that they were intended to benefit from it. ***(See Among Mary Gorretti Vs Tracks International Limited Supra)***.

Primarily, the controversy on this point of law is that the plaintiff sued on the basis of a
10 Participation Letter intended to regulate the relationship between the 1st and 2nd defendant, to which the plaintiff was not a party. The defendants, therefore, argue that the plaintiff had no locus to sue on the basis of the said letter by virtue of the doctrine of privity of contract.

From perusal of the pleadings, it is evident that the plaintiff makes several references to the regulatory relationship between the 1st defendant and the 2nd defendant. However, it appears
15 to me that the substance of the plaintiff's cause of action is that the 1st defendant concealed material information as to the time when the Apex loan funds with very minimal interest rates were approved by the 2nd defendant, therefore causing the plaintiff loss and damages. In my opinion, the cause of action is not premised on the Participation Letter between the 1st and 2nd defendants.

- 20 In addition, the cause of action against the 2nd defendant appears to be in negligence in failing to perform its supervisory/ regulatory roles as required by law. Paragraph 9 of the plaint reads as follows:-

25 *“The plaintiff shall also contend that had the 2nd defendant not been guilty of negligent commissions and / or omissions by duly performing its supervisory / regulatory roles as required of it under the scheme, the AFIs such as the 1st defendant would not have successfully cheated the final beneficiaries such as the plaintiff and the plaintiff shall hold the 2nd defendant liable for such negligent omissions and / or commissions in so far as;-*

- a. *The 2nd defendant failed to monitor and / or supervise the apex loan scheme to ensure compliance by AFI's with the terms and conditions of the apex loan scheme.*
- b. *The 2nd defendant's failure to put in place measures to ensure AFI's compliance with the terms and / or conditions of the apex loan scheme.*
- c. *The 2nd defendant failed, ignored, neglected and / or refused to act on the plaintiff's complaint against the conduct of the 1st defendant in respect of the apex loans”.*

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10 From the above, it appears to me that the plaintiff's cause of action against the 2nd defendant is not based on the Participation Letter between the 1st and 2nd defendants but is based on, allegedly, the general duty of care which the 2nd defendant owed to the plaintiff. The issue as to whether the negligence can be proved or if the 2nd defendant owed the plaintiff a duty of care is an issue for trial and cannot be resolved at this point.

15 I therefore do not accept the submission of Counsel for the defendants that the plaint does not disclose a cause of action against the 2nd defendant on the basis that it was not party to, nor privy to the lending contracts between the plaintiff and the 1st defendant. **Harlsbury's Laws of England 3rd Edition Vol.8**, states that:-

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“A person who is not a party to a contract, and therefore unable to allege any contractual duty, may claim in tort in respect of injury or loss suffered by him, if the breach constitutes also a breach of a duty of care owed to him apart from the contract.”

For the above reasons, preliminary objections 1 and 5 are answered in the negative and are, therefore, disallowed.

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Issue 2: *Whether the plaintiff's suit is res judicata.*

Counsel for the defendants submitted that the plaintiff had filed **HCCS No.0007 of 2012; Tororo Progressive Academy Ltd Vs DFCU Bank Uganda Ltd**, for general damages for breach of the loan agreement/letter of offer of loan and the suit was resolved through a

Consent Settlement Agreement dated 2th September 2012. Counsel contended that the new claims raised by the plaintiff in the present suit were *res judicata* because they ought to have been dealt with in the previous suit. Counsel relied on **Section 7 of the Civil Procedure Act** and *Kamunye and others Vs The Pioneer General Assurance Society Ltd [1971] EA 263*, to support the above submission.

In reply, Counsel for the plaintiff submitted that **HCCS No. 07 of 2012** was in relation to alleged breach of a loan offer by the 1st defendant; and that fraud, negligence, unjust enrichment and breach of contract by concealment of material facts about the apex loans was not part of the said suit. Further, that the relevant facts of the present case came to light in 2013 and could not have been the subject of **HCCS No. 07 of 2012**.

Counsel further submitted that the 2nd defendant could not plead *res judicata* because it was never a party to **HCCS No. 07 of 2012** and the question of negligence could not have been tried in that suit.

It was Counsel's further submission that *res judicata* could not be raised in a suit to set aside the same judgment; in the present suit, the plaintiff is seeking to set aside the Consent Judgment in **HCCS No. 07 of 2012** for fraud.

In rejoinder, Counsel for the defendants submitted that the allegations of fraud against the 1st defendant should have been raised in **HCCS No.07 of 2012**. In Counsel's view, if the plaintiff had exercised reasonable diligence, it would have found out about the said concealments or excessive interest charges. Further, that there was no proof that the plaintiff had carried out an audit where the alleged fraud by the 1st defendant was revealed.

It is trite law that the doctrine of *res judicata* is a complete bar to a subsequent suit and the court is barred by statute from trying any suit or issue which has been handled in a former suit between the same parties and has finally been decided by any court of competent jurisdiction. (See *Hydro Engineering Services (U) Ltd Vs Thorne International Bioler Services Ltd HCCS No. 594/2007*). Section 7 of the Civil Procedure Act Cap 71 provides that;

No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try the subsequent suit or the suit in which the issue has been subsequently raised, and has been heard and finally decided by that court.

First, from the above provision, and from the reading of the decision in **Hydro Engineering Services (U) Ltd Vs Thorne International Bioler Services Ltd HCCS No. 594/2007** it is apparent that the suit /matter should have been between the same parties. It is not in dispute that the 2nd defendant was not a party in **HCCS No.007 of 2012**. To this end, I accept the submission of Counsel for the plaintiff that the suit is not *res judicata* as between the plaintiff and the 2nd defendant.

Secondly, I have carefully looked at the Plaint in **HCCS No. 007 of 2012**, and the Plaint in the present suit and they appear to have different causes of action and the facts therein are substantially different. The cause of action in **HCCS No. 007 of 2012** was for a permanent injunction restraining the 1st defendant from selling the plaintiff's school without a court order in breach of the contract executed between the two parties. Even though the said loan agreements between the plaintiff and the 1st defendants are also part of the facts constituting the cause of action in the present suit, the context in which they are presented is completely and substantially different from that in **HCCS No. 007 of 2012**. The cause of action in the present suit is primarily fraud, negligence, unjust enrichment and breach of contract by concealment of material facts about the apex loans, which were all not part of the cause of action in **HCCS No. 007 of 2012**.

I am alive to the decision in **Kamunye and Others Vs the Pioneer General Assurance Society Ltd** (Supra), that the doctrine of *res judicata* also applies to every point which properly belonged to the subject of litigation in a former suit and which the parties, exercising reasonable diligence, might have brought forward in the said suit. However, in the present suit, the facts which are the subject of the suit were, apparently, discovered after the conclusion of the suit in **HCCS No. 007 of 2012**.

It is therefore my finding that the matter herein is not *res judicata*.

Issue 3: Whether the plaintiff's suit is time barred.

As to whether the suit is time barred, Counsel for the defendants relied on **Section 3** of the **Limitation Act** and submitted that actions relating to contract should be commenced within
5 6 years from the date of accrual of the cause of action. In Counsel's view, considering that the actions complained of by the plaintiff occurred between 1995 and 2006, the suit ought to have been commenced by 2012.

Counsel further submitted that the plaintiff could not take benefit of the fraud exception because if it had exercised due diligence it would have found out about the alleged
10 concealments or the excessive interest charges by the 1st defendant. It was Counsel's contention that the plaintiff was at all times aware that the money was made available through the 2nd defendant, and therefore should have contacted the 2nd defendant for any information.

Further, that while the plaintiff had contended that the fraud could not have been discovered
15 but for the audit that was conducted, no audit report was attached to prove the said fraud. In Counsel's view, the exception of fraud could not be applied in a matter of pure speculation like the present.

On his part, Counsel for the plaintiff submitted that the plaintiff became aware of all the material facts in 2013, and, therefore, that is when time started to run. Further, that as per
20 **Section 25** of the **Limitation Act**, fraud postpones the limitation period to the time when the fraud is discovered.

Counsel further submitted that considering that the 1st defendant was the plaintiff's banker with a duty of acting in good faith, the plaintiff had no reason to carry out investigation against the 1st defendant without any suspicion as to fraud. Therefore, there was no reason
25 why the plaintiff could have sought for details/information from the 2nd defendant. With regard to the cause of action against the 2nd defendant, Counsel submitted that breach of its duty in monitoring and supervising the loan scheme was a continuous tort.

In rejoinder, Counsel for the defendants made reference to *Stanbic Bank Ltd Vs Uganda Crocs Ltd, SC Civil Appeal No.4 of 2004*, where it was held that it is not sufficient to simply show that the plaintiff was in fact ignorant of his cause of action; that concealment of it by the defendant and by the defendant's fraud must have been established. Counsel submitted
5 that the plaintiff's pleadings did not show how the defendants concealed the fraud. Further, that it was not pleaded as to how any of the defendants prevented the plaintiff from obtaining information.

Counsel contended that there was no audit report attached to the pleadings to show when the said concealments were discovered, and thus all the plaintiff's arguments remain conjecture.

10 I have considered the submissions of Counsel, the law and the authorities cited in support of and in opposition of this point of law raised by Counsel for the defendants.

The first limb to the plaintiff's argument is that time of limitation started to run in 2013 when the relevant facts were discovered and in Counsel for the plaintiff's view, that is when the cause of action arose.

15 **Section 3(1)(a)** of the **Limitation Act** provides that no action founded on contract or tort shall be brought after expiration of 6 years from the date on which the cause of action arose. It is apparent from the reading of this provision that time begins to run from the date when the cause of action first arises. In the present case, the acts complained of in the plaintiff's pleadings took place between the year 2002 to 2006. I find that the plaintiff's cause of action
20 arose then, and that is when the time of limitation started to run.

Counsel for the plaintiff also submitted that considering that the claim was for fraud and concealment of material facts, the time of limitation was postponed to the time when the fraud was discovered.

By virtue of **Section 25** of the **Limitation Act**, the time of limitation can be postponed in
25 case of an action based upon fraud. It is not disputed that the plaintiff herein pleaded fraud. However, the defendants argue that the plaintiff was not prevented by the defendants from obtaining the information in issue, nor was it prevented from carrying out an investigation

where the fraud could have been discovered. In the defendant's view, on reasonable due diligence, the plaintiff should have found out about the alleged concealments.

Counsel for the defendants relied on *Stanbic Bank Ltd Vs Uganda Crocs Ltd, SC Civil Appeal No.4 of 2004, citing "Limitation of Actions" by Michael Franks, Sweet and Maxwell Ltd, at page 202*, where it is stated that concealment of the cause of action must be established.

In my opinion, alleged failure by the 1st defendant to disclose to the plaintiff when it applied for apex funds that the loan had not been disbursed to it, and allegedly withholding information regarding the actual interest rates was concealment, which was pleaded by the plaintiff. I find that it is not a practicable argument that the plaintiff should have carried out an investigation and seek for further details from the 2nd defendant against the 1st defendant, without any reason for suspicion.

In view of the above, I find that time started to run against the plaintiff from the time when the fraud/concealment was first discovered.

Accordingly, this preliminary objection is also disallowed.

Issues: *Whether the plaintiff's suit is defective for being brought against an agent of a disclosed principle.*

With regard to this preliminary objection, Counsel for the defendants submitted that where an agent makes a contract on behalf of his principal, that contract is that of the principal and not the agent. In Counsel's view, the suit could not be sustained against the 2nd defendant who was merely an agent of a disclosed principal, Government of Uganda.

In reply, Counsel for the plaintiff conceded to the fact that generally an agent of a disclosed principal cannot sue or be sued on a contract made with a third party. Counsel, however, submitted that this common law position is modified by law in the case of statutory agencies such as the 2nd defendant. Counsel further submitted that the Bank of Uganda Act empowers the 2nd defendant to formulate and implement monetary policy and that as a statutory agent in financial matters for the Government, it can sue and be sued in financial matters. Counsel

relied on *Hassan Bassajja & ors Vs Bank of Uganda, HC Misc Application No.234 of 2013* for the above submission.

In rejoinder, Counsel for the defendants relied on *Obuntu Consulting Limited Vs Plan Build Technical Services Limited HCCS No. 173 of 2014*, and reiterated his earlier
5 submission that a person who acts as a disclosed principal is not liable in respect of particular transactions. Counsel submitted that it was an agreed fact that the 2nd defendant was an implementing agent of the Government of Uganda in the transaction in issue and therefore the cause of action was unsustainable against the 2nd defendant.

I accept the defendants' submission that an agent of a disclosed principal cannot sue or be
10 sued for a transaction belonging to a disclosed principal. (*See Obuntu Consulting Limited Vs Plan Build Technical Services Limited (Supra), Bassajja & 9 ors Vs Standard Chartered Bank Limited & Ors (Supra)*). It is not in dispute that the 2nd defendant is empowered to act as an agent of the Government of Uganda in financial matters under the Bank of Uganda Act.

I find that the principal-agent relationship between the 2nd defendant and the Government of
15 Uganda is stipulated/regulated by statute and does not therefore fall under the general common law principles governing principal-agent relationship. By virtue of **Section 2(2) of the Bank of Uganda Act**, the 2nd defendant is empowered to sue and be sued in its own name. Although the 2nd defendant was acting as the agent and for the benefit of the Government of Uganda, it is given legal status by statute and can be sued in that regard. I
20 find the decision of this court in *Hassan Bassajja & 9 ors Vs Standard Chartered Bank & 2 ors (Supra)*, instructive on this issue. It was stated as follows;-

“My view is fortified by the express provisions of the Deeds of Assignment that gave power to sue for recovery of the debt to the 3rd respondent and the fact that **Section 2(2)** of the Bank of Uganda Act provides that the 3rd
25 respondent shall be a body corporate with perpetual succession and a common seal and may sue or be sued in its corporate name. **Section 5** of the same Act also provides that Bank of Uganda shall have all the powers pertaining to a legal person and may do all things necessary for better carrying out its functions.

5 It was strongly argued for the applicant that it is Attorney General that has power to sue or be sued on behalf of GOU in all civil suits. I also agree with that argument but hasten to add that in this particular transaction the intention of the parties was that the 3rd respondent would sue on behalf of GOU and since the law empowers it to do so I find nothing irregular or illegal with that arrangement.

10 I must also observe at this juncture that the principle stated by the applicants that an agent of a named principal cannot sue in its name for recovery of a debt belonging to the principal is no applicable in this case because the principal-agent relationship between the GOU and Bank of Uganda is regulated by statute. That principle as stated in the authorities relied upon by the applicant to support its arguments can only be applied where there are no express provisions of the law. Since the law gives Bank of Uganda power to sue it is my firm view that the relationship is more specifically regulated by that statute as opposed to the general principles that govern principle-agent relationship.

20 It is noteworthy that whatever Bank of Uganda does is for the benefit of GOU and it is the intention of the legislature that BOU as an agent of GOU in financial matters would have power to sue where need arises as well as have all the powers pertaining to a legal person and may do all things necessary for better carrying out its functions...”

In view of my findings above, I find this preliminary objection as having no merit and, accordingly, disallow it.

25 **Issue: Whether the suit is an abuse of Court process to the extent that it seeks to set aside the Consent Judgment in HCCS No.007 of 2012, Tororo Progressive Academy Vs DFCU Bank Uganda Ltd.**

Counsel for the defendant’s reference to the plaint where setting aside the Consent settlement in **HCCS No. 007 of 2012** was one of the reliefs sought. Counsel relied on **Attorney General Vs James Mark Kamoga, SCCA No. 8 of 2004**, where it was stated that a consent judgment

could be reviewed or set aside under **Section 82 of the Civil Procedure Act and Order 46 rule 1 of the Civil Procedure Rules**, and that such applications ought to be made before the court that passed the Decree.

In Counsel's view, it was an abuse of court process for the plaintiff to file the present suit in this Court rather than filing it in the High court at Mbale where the Consent Judgment had been passed. Counsel further relied on ***Gerald Karuhanga Vs Attorney General, HC Misc Cause No. 60 of 2015***, and submitted that considering that there was no law supporting the setting aside of a consent judgment in a court different from the one which granted the judgment, the plaintiff was acting in abuse of court process.

10 In reply, Counsel for the plaintiff submitted that the plaintiff's suit was not for review but, among others, to set aside the consent judgment for reason of fraud. Counsel cited ***Hannington Wasswa & Anor Vs Maria Onyango Ochola & 3 ors [1994] IV KALR 98***, where it was held that it is not proper to commence proceedings to challenge alleged acts of fraud by notice of motion because the standard of proof of fraud must be high and that this
15 requires an ordinary suit where witnesses may be cross examined.

Counsel contended that the case of ***Attorney General Vs James Mark Kamoga (Supra)***, was not relevant to the present suit considering that this was not an application for review.

In rejoinder, Counsel for the defendants submitted that setting aside a judgment is an interlocutory application and does not seek final orders. Counsel relied on ***East African Law Society Vs Attorney General of Burundi and the Secretary General of the East African Community, Application No. 3 of 2014***, where it was held that an interlocutory order does
20 not dispose of the case completely but leaves something more to be adjudicated upon.

I have carefully considered the submissions of Counsel on this point of law as well as the law relating to consent judgments.

25 A consent judgment may be set aside for fraud, collusion, by agreement contrary to the policy of court or if the consent is given without sufficient material facts or in misapprehension or ignorance of material facts. (***See Hirani Versus Kassam (1952) EA 131***).

Ordinarily, a judgment, including a consent judgment may be set aside by the same court which sanctioned/passed the judgment by virtue of the inherent powers of court. However, this does not limit the rights of the parties to move court by way of review or revision in setting aside judgments.

- 5 In the present case, the plaintiff sought from this court, an order to set aside the Consent Judgment in **HCCS No. 007 of 2012**, on grounds of fraud. It is trite law that allegations of fraud are very serious and ought to be pleaded and proved. (See *Kampala Bottlers Ltd Vs Damnico Ltd, SC civil Appeal No.22 of 1992, Adam Yacob Muhammed & Anor Vs Madaya Rogers HCCS No.14 of 2013*).
- 10 I have also considered the submissions and authorities cited by Counsel for the defendants that setting aside of consent judgment is an interlocutory matter which cannot be brought by way of a fresh suit. I agree to the extent that the above is the proper procedure where the grounds raised are not relating to allegations of fraud.

In *Hannington Wasswa & Anor Vs Maria Onyango Ochola & 3 ors, SC Civil Appeal No. 8 of 1993*, court made a reference to a comment by **Woodroffe** and **Mathew** in their book
15 **“Civil Procedure in British India” 2nd Ed on page 252**, where it was stated that where a judgment itself is being impeached on the ground that it was obtained by fraud then the matter must come by way of a separate suit. It was held that it was not proper to commence proceedings to challenge the alleged acts of fraud by notice of motion because the standard
20 of proof of fraud was high and therefore required an ordinary suit where witnesses would be cross examined.

I have already stated above that the facts forming part of **HCCS No. 07 of 2012** are also part of the facts forming part of the plaintiff’s case in the present suit although the causes of action are different. I have noticed a practice that in cases of this nature, review is a popular
25 way of applying to set aside Consent judgments. However, I find no fault that the plaintiff chose to seek for relief by way of plaint considering that allegations of fraud are the grounds for the prayer to set aside the Consent judgment.

I, therefore, answer this preliminary objection in the negative.

In conclusion, I do not find merit in the preliminary objections raised by Counsel for the defendants. I order that the suit proceeds on merit.

Costs will abide the outcome of the suit.

It is so ordered.

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B. Kainamura
Judge
14.09.2016

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