THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(COMMERCIAL DIVISION)

MISC. APPLICATION NO. 904 of 2015

(ARISING FROM HCCS NO. 467 of 2013

1. CTM UGANDA LIMITED

2. PRIME HOLDINGS LIMITED

3. JOSEPH MAGEZ1::APPLICANTS

VERSUS

1. **ALLMUSS PROPERTIES UGANDA LTD**
2. **ITALTILE CERAMIC LTD**
3. **ITALTILE LIMITED**
4. **GREGORY MAGEZI::RESPONDENTS**

BEFORE: THE HON. JUSTICE DAVID WANGUTUSI

R U L I N G:

This Application filed by CTM Uganda Limited, Prime Holdings Limited and Joseph Magezi herein after referred to as the 1st,2nd and 3rd Applicants respectively is brought against Allmuss Properties Uganda Limited, Italtile Ceramics Limited, Italtile Limited and Gregory Magezi herein referred to as the 1st ,2nd,3rd and 4th Respondents.

The Applicants seek the following orders;

1) The Consent Judgment signed by the 1st Applicant and the Respondents on 20th February 2015 and endorsed/entered by the Learned Registrar of the High Court Commercial Division on the 2nd March 2015 be set aside.
2) A consequential order doth issue setting aside the share/stock transfer form, the land transfer dated 17th October 2015 and the special Resolution dated 25th May 2015 signed or made pursuant to the impugned Consent Judgment.

The Application is grounded on the following;

a) That the Consent was entered into by and between Mr. Gregory Magezi on behalf of the 1st Applicant and the Respondents/ Defendants without authority, instructions or resolutions to do so by the shareholders of the 1st Applicant Company.
b) That the Consent Judgment encompassed unpleaded issues in Civil Suit No. 467 of 2013 and included legal entities or companies which were not parties to the suit much to the prejudice of the 1st Applicant and or its shareholders as a whole.
c) That there was collusion and or connivance between Gregory Magezi and the Respondents/ Defendants to fraudulently and illegally enter oppressive and unfavourable terms for the 1st Applicant.
d) That there was no general or special meeting to sanction the change of name and offering the 1st Applicant's interests in land comprised in LRV 4293 Folio 9 Plot 26-28 Kibuli Road and the 1st Applicant's shares as the assets to be attached in execution of the impugned illegal Consent Judgment.
e) That there was no resolution passed by the 1st Applicant authorizing Mr. Gregory Magezi to agree not to oppose the trade mark registrations of Italtile group.
f) That the agreement to change the name "CTM Uganda" was illegal because it had not been sanctioned by the shareholders of the Applicant Company.
g) That the Applicants would suffer irreparable damage if the court denied them what they sought.

The Consent Judgment that the Applicants seek to set aside was filed on the 20th February 2015 signed by Kampala Associated Advocates for the Defendants who are now the Respondents, thereafter with Lex Uganda Advocates representatives of Allmuss Properties (U) Ltd, 1st

Defendant on the one part and Mugenyi & Co. Advocates for the Plaintiff now the 1st Applicant and Gregory Magezi.

The Registrar endorsed the consent on the 2nd March 2015.

The first issue was that Gregory Magezi entered into the Consent Judgment with the Applicants without authority, instructions or resolutions to do so by the share holders.

I have gone through the affidavits in support of the Notice of Motion, replies thereto and listened to the submissions of both parties.

There is no doubt that Gregory Magezi and the 1st Applicant's Advocates participated in the negotiations that led to the Consent Judgment which was signed by both of them on the 20th February 2017.

It is also not in doubt that at the time the two signed the Consent, they knew the value of the land that would be equated to USD 1,650,000. The question for resolution here is whether the two had the authority to enter into the Consent Judgment.

Record indicates that on the 12th of November 2005, M/S Prime Holdings Ltd seated at the CTM Office Kampala held a meeting passing a resolution which appointed Gregory Magezi and empowered him to handle the liabilities of the 1st Applicant.

The resolution was unanimously passed in the following terms;

1) *The Managing Director of Prime Holdings Ltd Mr Magezi be and is hereby authorised for purposes of raising additional capital to pay off CTM's liabilities and or to finance the businesses of CTM Ltd, to transact in the shares of Prime Holdings Ltd in any way he deems appropriate including but not limited to* ***selling, mortgaging****,* ***charging*** *and or assigning the said shares.*
2) *That the Managing Director of Prime Holding Ltd is hereby authorised to enter into negotiations in respect of the above, and to execute* ***any documents*** *and* ***perform all things*** *requisite or necessary to the selling, mortgaging, charging and or assigning of the said shares.*

The resolution was not challenged by the Applicants. This resolution gave the 4th Respondent wide powers to deal with the 1st Applicant's shares and assets. It empowered him to "**sell,**

execute documentsandperform all things" in respect of the 1st Applicant's liabilities. The 4th Respondent's activities in respect of the shares by transferring themwas in my view authorised by the resolution. His entering into negotiations and subsequently signing the Consent Judgment was based on the fact that the resolution empowered him to sign documents pertaining to the liabilities of the 1st Applicant.

Furthermore, with the afore mentioned resolution in place, parties outside to the contract did not have to enquire as to the 4th Respondent's authority as Director to enter into any agreements even the signing of the Consent Judgment. This legal position is buttressed by section 53 of the Companies Act which provides;

> *"A party to a transaction with a Company is not bound to enquire whether it is permitted by the Company's Memorandum or as to any limitation on the powers of the board of directors to bind the Company or authorise others to do so."*

The foregoing stems from section 52 of the Act which clearly states that the directors of the Company can and do bind it. It provides in section 52(i);

> *"The powers of the board of directors to bind the company or authorise others to do so in favour of a person* ***dealing with*** *the company in good faith shall not be limited by the company's memorandum."*

The section goes ahead to define the words "deals with" in section 52 (2) (a) as;

> *"a person "deals with" a company if he or she is a party to any transaction or other act to which the company is a party."*

And on good faith it provides in section 52(2) (b);

> "*a person shall be presumed to have acted in good faith unless the contrary is proved."*

It is a settled position of the law that an outsider dealing with a Company is deemed to have constructive notice of its Articles of Association and not any documents that are not public; **Royal British Bank vs Turquand (1856) 6 E&B 327.** The exception to this rule would be in circumstances where the outsider has knowledge of irregularities in the internal management and

fails to carry out proper inquiry in instances of suspicion and forgery of documents relied on by the outsider.

In any case people transacting business with companies are entitled to assume that internal rules are complied with even if they are not. Under the Indoor Management rule, the Company's indoor affairs are the Company's problems.

The foregoing rule was later entrenched in the law by the endorsement of Lord **Hatherly in Mahony vs East Holyford Mining Co. (1875) L R 7 HL 869** in the following words;

> " *When there are persons conducting the affairs of the Company in a manner which appears to be perfectly consonant with the articles of association, those so dealing with them externally are not to be affected by irregularities which may take on the internal management of the Company."*

In the Mahoney case, the Company articles provided that cheques should be signed by any two of the three named directors and by the secretary. The fact that the directors who had signed the cheques had never been properly appointed was held to be a matter of internal management, and the 3rd parties who received those cheques were entitled to presume that the directors had been properly appointed.

In the instant case every outsider who in good faith dealt with the 4thRespondent who had by resolution been appointed to handle the Applicants' liabilities, was entitled to assume that the internal requirements and procedures had been complied with.

Clearly the Board had authorised the 4th Respondent to handle such transactions of the 1st Applicant as those that included negotiations that led to the Consent Judgment. The Respondents were not bound to enquire further into his capacity to consent. They dealt with him as an authorised director capable of binding the 1st Applicant. In these proceedings there is no proof that they were fraudulent or misrepresentation of any facts. They acted on material facts which were clear and unambiguous. There is nothing to show that they acted in bad faith.

From submissions of Counsel for the Applicants, it is noted that there is an attempt to divorce the acts of the 4th Respondent from those of the 1st Applicant. In this case however it is clear that the 4th Respondent was acting on behalf of the 1st Applicant. It is a settled legal position that while a

Company is a legal person on incorporation it has no will or mind of its own. The purpose for such will or mind arises because of the civil intention of knowledge as an ingredient for the cause of action or defence; **ElAjou vs Dollarland Holdings [1994]2 ALL ER 685.**

The attributes of will and mind of a natural person to the Company was pronounced by Viscount Haldane L.C in **Lenards Carrying Co. vs AsiaticPetroleum Co. Ltd [1915] AC 705** in these words;

> *"My Lords a corporation is an abstraction, it has no mind of its own any more than it has a body of its own; its active and directing will must consequently be sought in the person of somebody, who for some purpose may be called an agent but who is really the mind and will of the corporation, the very ego and center of the personality of the company."*

The director, in this case Gregory Magezi was the one directing its mind and in my view bound the 1st Applicant by his action.

The Applicant also faulted the Consent Judgment to have encompassed unpleaded issues in Civil Suit No.467 of 2013.

As I have earlier said the Consent Judgment was a result of a settlement which was reached after negotiations conducted between the representatives of all the parties. The wording of the settlement shows that the parties did not only consider what was in the pleadings but also took note of what might arise in future and provided for them. It is also clear from the Consent Judgment that the suit was settled by a compromise.

In such a situation the parties while dealing with what was in issue, also entered a new contract. This new contract would supersede the original cause of action. In such a Consent Judgment matters that were not specifically pleaded may be considered for the compromise to hold; **Ismail Sunderji Hirani vs Noorali Esmail Kassam CA 11 OF 1952 per Windham, J.**

This is a common occurrence in mediation where the parties may deviate from the pleadings in search of a settlement. When such a situation arises, the endorsed agreement is non-the less a Consent Judgment. When a mode of payment settlement is agreed under such a procedure, the

Court cannot interfere with it even where it appears to be unfounded as long as it was not obtained by fraud or collusion.

In a matter where the parties are fully competent to contract, the court which enters a Consent Judgment need not make any inquiry into the wisdom of the parties' bargain. It does not even make any determination upon the facts which were originally in issue in the action.

"The Court will not inquire into the merits or the equities of the case. The only questions to be determined by it are whether the parties are capable of binding themselves by consent, and whether they have actually done so",**Rink vs Director of Insurance 141 NEB.**

It may not even matter if the parties erred because;

> *" the error in it, if there is any, is their own, and not the error of the court."*

What is important however is that the Court cannot enter a Judgment which departs from the parties' agreement.

In the instant case it has not been shown that the court departed from the parties' agreement.

In conclusion this Consent Judgment had a dual aspect. Firstly, it represented the agreement between the parties by settling the underlying dispute, secondly it paved a way for the entry of a Judgment on matters that were pending or contemplated. The foregoing is easily ascertainable by scrutinizing the intent of the parties. Here the intent of the parties was to put into effect what had been agreed, a position fully buttressed by the fact that the Applicant went ahead to put into effect the terms of the Consent Judgment.

The parties had in fact elected to be bound by what they had agreed. That being the case, I find no merit in the claim that some of the things agreed upon were not in the pleadings. This objection therefore fails.

On the issue that the 4th Respondent colluded with the other Respondents to defraud the Applicants, I find no proof of such collusion as claimed. The 4th Respondent was authorised by the Applicants to represent it. He may have made errors in his mandate that however does not amount to collusion or fraud. I find no merit in this ground and it fails.

On the issue of whether there was a general or special meeting to sanction the change of name, a letter to the Respondents' Counsel by the Applicant dated 31st August 2015 clearly shows that the necessary steps were taken. It reads in part;

> "*CTM Uganda Limited conceded in good faith to a change notwithstanding the fact that this aspect was not a part of the main suit. It is our pleasure to confirm this was successfully implemented and the necessary permission from Uganda Registration Services Bureau Secured."*

At the time of writing, the Applicants had not gone to court to challenge the Consent Judgment.

Counsel for the Applicants submitted that since the Registrar of Companies as a statutory body had not yet approved the change of name, the clause could not be included in the Consent. My view however, is that for the parties to seek the approval of the Registrar of Companies they themselves had to reach such an agreement.

Furthermore, this is but moot because the Registrar of Companies did approve and a change of name was secured.

Counsel for the Applicant also submitted that the 4th Respondent could not have signed the resolution for change of name because he was not a shareholder. In my view the 4th Respondent as a shareholder of Prime Holdings also had shares in the 1st Applicant.

The annual returns filed on behalf of Prime Holdings as of 31st December 2011 indicated that the 4th Respondent held 31% of the shares. He in my view signed the resolution as such.

The foregoing clearly shows the procedure through which the change of name and transfer of land was done, and I find nothing wrong with it.

The sum total is that the Applicants have failed to establish any ground upon which the Consent Judgment may be set aside.

The Applicants also sought for a Consequential order to set aside the share/stock transfer form and the land transfer dated 17th October 2015 and the special Resolution dated 25th May 2015. A Consequential order in this would be one giving effect to this Ruling. It is one that follows as a result of the Ruling. The order must not detract from the Ruling or contain extraneous matters.

In the instant Application, since the Consent Judgment has not been set aside, to grant the prayer of the Applicants to set aside what was the result of the Consent Judgment would be to detract from the Judgment.

Since the Consent Judgment has not been set aside, the Consequential order sought is denied.

Lastly I now end by saying the Application was a non starter for the 1st Applicant because She filed a similar Application 806 of 2015.

The sum total is that I find no merit in the Application and it is dismissed with costs.

Dated at Kampala this 25th day of October 2017

HON. JUSTICE DAVID WANGUTUSI
JUDGE