

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL DIVISION)
MISC APPLICATION 431 OF 2016
ARISING FROM CIVIL SUIT NO.380 OF 2016

MTN UGANDA LIMITED:.....: APPLICANT/DEFENDANT

VERSUS

STALLION GROUP OF COMPANIES LTD

DESH KANANURA :.....:RESPONDENTS/PLANTIFFS

BEFORE: THE HON. JUSTICE DAVID WANGUTUSI.

RULING:

This Application was brought by Notice of Motion under Section 98 of the Civil Procedure Act, Section 33 of the Judicature Act and Orders 36 rule 4, and Order 52 rules 1, 2 and 3 of the Civil Procedure Rules SI 71-1. It seeks for orders that; unconditional leave be granted to the Applicant to appear and defend the main suit and that costs of this Application be provided for.

The Application was premised on the following grounds; that the Respondents' claim as contained in the Complaint is premature, misconceived and a total abuse of the court process, that the suit raises triable issues of fact and law in respect of the Applicant's indebtedness to the Respondents; that the Applicant has a proper, good and complete defence of the claim and that in the interest of justice, the Applicant be granted leave to appear and defend.

It is on record that on 12th December 2015, the Applicant received from the 2nd Respondent 833 tickets worth UGX 25,000,000,000/= for the Battle of the Legends Football game scheduled to take place at Namboole Stadium on 12th December 2015. The Applicant undertook to make one

payment in full on 15th December 2015 default of which they would pay a fine of 10% increment on the amount due and owing on a weekly basis, Annexure A.

All these were agreed before the incorporation of the 1st Respondent. The 1st Respondent however completed its incorporation on the 4th February 2016. And on the 10th February 2016 it forwarded an invoice and filled in the suppliers registration details. One of the issues for determination before court is whether the pre-incorporation contract is enforceable and the other issue is whether it is mandatory for the debtor to declare his TIN before payment could be made.

The supplier registration details provided particulars of the Respondent as Stallion Group of Company Limited with the second Respondent as one of the directors. The Respondent was also required to supply banking details which he supplied as Diamond Trust Bank Uganda Limited Lugogo whose account number was 0056712001.

At the time of supply of these details the 1st Respondent had already been incorporated. From the 10th February 2016 the Applicant was dealing with a registered company. The contracts which had been purportedly made on behalf of the Applicant before it was formed had effect as one made with the 2nd Respondent who purported to act for it; **section 54 of the Companies Act**. In the dealings that followed one sees a clear adoption of this pre-incorporation contract.

Section 54 changed the position of the old Companies Act which would have insulated the company from the pre-incorporation contracts. It has made it possible now as in this case for a company to adopt pre-incorporation contracts and enforce them. This is seen in the various communications between the Applicant and the Respondent.

From the foregoing its court's finding that the 1st Respondent can sustain a suit against the Applicant on the contract that was entered into before its incorporation.

Turning to the issue of whether a debtor is mandated to declare his TIN one should closely look at sections 135(1) of the Income Tax Act and 50(1) of the Value Added Tax Act that state that for the purposes of identification of tax payers, the Commissioner may issue a number to be known as a tax identification number to every tax payer.

On 7th March 2016 the Applicant through their chief executive officer wrote to the Respondent suggesting to pay a sum of money less VAT because the Respondent had not supplied it with the

appropriate TIN. It also stated that the TIN that had been supplied belonged to another entity M/S Byona Executive Travel Limited which was different from the Respondent.

On 10th February 2016 the Respondent supplied the bank particulars as requested for by the Applicant. The Applicant did not remit the money because they found that the TIN 100185116 that the Respondents had supplied together with the bank particulars did not belong to the Respondents. Because of that they refused to pay saying that they could not pay VAT on the above invoice unless a TIN belonging to the Respondents was provided for.

This therefore raises an issue as to whether the proper TIN was a prerequisite for them to make payments. The answer to this question will determine whether the Respondents are entitled to interest as claimed or not. In other words whether the time lapse that occurred from the date of the agreement to date was occasioned by the Respondents.

In conclusion the issue that emerges for trial is whether the failure to supply a correct TIN would prevent payment of the debt and therefore since there is no dispute that the Applicant owes the Respondents, when would the interest begin to accrue? The need for trial is also made more necessary because of the allegation that there is an attempt to use someone else's TIN.

It is therefore this court's finding that a triable issue has been established and the Application to appear and defend is granted. The Applicant shall file his defence within ten days from the date hereof. This being a summary suit the Registrar is directed to fast track it. Costs shall abide the suit.

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David K. Wangutusi

JUDGE

Date: 17th January 2017