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**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
[COMMERCIAL DIVISION]**

[ARISING FROM MISC. APPLICATION No.832 OF 2015]

[ARISING FROM MISC. APPLICATION No. 651 OF 2015]

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[Arising From H.C.C.S No 651 of 2015]

SHMUEL HIRSHBERG MULI ::: APPLICANT

VERSUS

AHARON LI-RAN ::: RESPONDENT

AND

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1. SHMUEL PELED
2. BOB KABONERO
3. AUDLEY LIMITED

::::: NECESSARY AND PROPER PARTIES TO THE APPLICATION

BEFORE: HON. MR. JUSTICE B. KAINAMURA

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RULING

This is an application brought under Section 98 of the Civil Procedure Act and Order 51 Rules 1 and 3 of the Civil Procedure Rules by the applicant who is the first defendant in the main suit and seeks declaratory and consequential orders.

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He seeks firstly, a declaration that the respondent (1st respondent in Misc. Appl No. 832 of 2015) is in contempt of the restraining order of this court dated 19th October 2015 restraining him from transferring, alienating and or disposing of the 60 % shareholding in Audley Limited in respect of which the applicant claims ultimate beneficial ownership by having caused and or permitted, subsequent to the issuance of the Order, the purported transfer of that shareholding from the name of his nominee, Garwood Limited to the name of Queen-Foreign Affairs Limited.

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Secondary, a declaration that the respondent is in contempt of the same restraining order of this court restraining him from interfering directly or indirectly with the operations of Kampala Casino

and Pyramids Casino other than through duly convened ultimate beneficial shareholding meetings as pleaded and or meetings of the current registered Ugandan operations directors by having caused or permitted (as the 86.6% registered beneficial shareholder of Audley Limited) subsequent to the issuance of the order, the foreign directors of Audley Limited to purport to issue a Power of Attorney dated 3rd February 2016 appointing one Yigal Zulkha as the alleged attorney of Audley Limited, the fourth respondent with alleged powers to, inter alia, carry on the day to day operations of Kampala Casino and Pyramid Casino, change the Casino management and take over operation of the Casino bank accounts. All the above constituting direct interference by the respondent in the operations of Kampala Casino and Pyramid Casino.

10 The applicant also seeks two consequential orders firstly , an order that by reason of the said contempt this honorable court disregard the purported transfer(effected subsequent to the restraining order) of the said 60% shareholding from the name Garwood Limited to the name of Queen-Foreign Affairs Limited and secondary an order that by reason of the said contempt this honorable court do disregard the purported Power of Attorney dated the 3rd February 2016 issued in contempt of the restraining order of this court and the matter be adjudicated based on the position prior to the contempt.

The applicant argued out the following issues.

1. When the 6,000 shares ,(60 % of Audley Limited shareholding) the subject of this suit were transferred from the names of Garwood Limited to the names of Queen –Foreign Affairs Limited and whether this was subsequent to the 19th October 2015 Restraining Order. If so, whether the said transfer was caused and/ or permitted by the respondent.
2. Whether the issuance by Audley Limited of the Power of Attorney dated 3rd February 2016 purporting to appoint Yigal Zilkha as the attorney of Audley Limited with powers to *inter alia* carry on the day to day operations of Kampala Casino and Pyramid Casino, change the casino management and take over operation of the casino bank accounts was caused or permitted by the respondent and if so whether the said power of attorney was issued in contempt of the restraining order of the 19th October 2015 which restrained the respondent from interfering directly or indirectly with the operations of Kampala Casino and Pyramids Casino other than through duly convened ultimate beneficial shareholders meetings as pleaded and or meetings of the current registered Uganda operations directors.

3. If the respondent was in contempt of the 19th October 2015 restraining order in both respects indicated in issue 1 and 2 above, whether the purported transfer of shares to Queen- Foreign Affairs Ltd and the purported power of attorney to Yigal Zilkha should be disregarded and in what way additionally should the respondent be sanctioned for the said contempt.

Brief background of the case.

Audley Limited is a foreign company which was incorporated in the Isle of Man on the 15th day of August 1991 and registered in Uganda in 17th November 1992.

In 2012, the beneficial shareholding in Audley Limited company was held as to 5,000 shares each (being 50 percent of the issued share capital) by the respondent and Shmuel Peled who each held declarations of trust in respect of their said shareholding from the registered nominee share holders being Tanwood Limited in respect of Shmuel Peled's 50% shareholding and Garwood in respect of the respondents share holding.

On 14th November 2012, the Shmuel Peled and the respondent upon the request of the applicant executed a Declaration of Trust confirming that they jointly held in trust for his benefit 60 % of the issued share capital of Audley Limited i.e 6000 shares.

The ultimate beneficial ownership in Audley Limited was at all material times held as 60% for the applicant, 13.3% for the respondent, 13.3 % for Shmuel Peled and 13.3% for Bob Kabonero and accordingly other than with regard to their 13.3 percent beneficial shareholding each of Shmuel Peled and the respondent were trustees for the shares they held for the benefit of the beneficial owners.

In March and April 2014, the ultimate beneficial shareholders in Audley Limited agreed to effect transfers of their shareholding from the nominee shareholders and the trustee to the ultimate beneficial owners.

On 27th March 2015, it was agreed between Shmuel Peled and the respondent as joint trustees that Shmuel Peled would only keep the 1,334 shares he held beneficially and would transfer to the respondent the 3,666 shares he held as a trustee to enable the respondent who would then hold

8,666 shares to transfer 6,000 shares to the applicant, 1333 shares to Bob Kabonero and keep 1,333 shares he owned beneficially.

On the same date, Shmuel Peled signed a declaration transferring to the respondent 3,667 shares and on the 2nd April 2015 upon registration of that declaration / transfer the registered shareholding
5 in Audley Limited company was altered to have 8,666 shares in the name of Garwood Limited on trust for the respondent and 1,334 in the names of Tanwood Limited on trust for Shmuel Peled beneficially.

In 2015, the applicant instituted an application against the respondent seeking court to restrain him from transferring, alienating and/ or disposing of the 60 % shareholding in Audley Limited
10 company and from interfering directly or indirectly with the operations of Kampala Casino and Pyramids Casino other than through a duly convened ultimate beneficial share holders meetings and or meetings of the current registered Ugandan operations operators directors until the final disposal of the suit and restraining the 2nd and 3rd respondents (therein) from dealing with the operations of Audley Limited in any manner prejudicial to the applicant's 60% beneficial
15 ownership until final disposal of the suit.

This court granted the orders sought and in addition directed the Registrar of Companies of Uganda to maintain the *status quo* of the company accordingly.

The applicant argues that the respondent on or about the 19th May 2016 purported to cause or permit the transfer of the 6,000 shares (60% shareholding) held by Garwood Limited in trust for
20 the applicant's ultimate benefit from the names of Garwood Limited to the names of Queen-Foreign Affairs Ltd.

And that the purported transfer is in law ineffective and invalid and was in gross contempt and disrespect of the court and its authority and a blatant disregard of an unambiguous court order that restrained the transfer by the respondent of the 60% shareholding claimed by the applicant.

25 The respondent in his affidavit in reply deposed that the transfer of the 60% shares in Audley Limited company to Queen Foreign Affairs Limited occurred in 1997 way before the said ruling was passed and since the order cannot act retrospectively, there is no contempt carried out as alleged by the applicant. He also alleges that since the company is incorporated in Isle of Man, the

court order is not binding on the company which was incorporated in Isle of Man unless there is a reciprocal judgment enforcement treaty.

Ruling

For purposes of this ruling, I shall restrict myself to the main issue in contention and that is
5 whether the respondent was in contempt of court.

The respondent in paragraph 5,8 and 9 of his affidavit in reply sworn on the 6th September 2016 states that the transfer of the 60% shares in Audley Limited which are the subject of the suit to Queen-Foreign Affairs Limited took place in 1997 prior to the 19th October 2015 restraining order and therefore the said transfer was not in contempt of the restraining order.

10 He averred that the 60% shares were transferred when the respondent sold the shares to Bursa Limited controlled by Mr. Zilkha Yiga on the 17th January 1994 and that Bursa Limited transferred its shares to M/S Queen Foreign Affairs Limited. He attached a share transfer agreement where he agreed to transfer 60 % of the shares to Bursa Limited a foreign company registered in Jersey, at a consideration of USD 100,000.

15 The respondent further states that the Bursa later sold its shares to Queen – Foreign Affairs Limited. In support of this there is a copy of a certificate of incumbency which showed the shareholders of Audley Limited to include Tanwood Limited holding 1,334 shares, Queen-Foreign
Affair Limited holding 6,000 shares and Garwood Limited holding 2,666 shares. However I note that this certificate was dated 20th May 2016 which is a date after the ruling in Misc. Appl No. 831
20 of 2015 was made.

The applicants in their reply in rejoinder aver that the above claim is not true. They adduced evidence to show that Bursa Limited was not a shareholder of Audley Limited. They relied on copies of Audley Limited company's annual returns for eight years from 2008 to 2015 that showed that the nominal share capital in Audley Limited company was GBO 10,000 comprised in 10,000
25 shares held as to 5,000 shares by each of Tanwood Limited and Garwood Limited.

From that evidence on record, it is clear that from 2008 to 2015, the shareholders of Audley Limited were Tanwood Limited and Garwood Limited each holding 500 shares. It is not shown any where that either Bursa Limited or Queen Foreign Limited were shareholders in the company.

Further, the applicant relied on copies of the declaration dated 2nd April 2015 by which Shmeul Peled transferred 3,6667 shares to the respondent and a declaration of trust by Tanwood Limited dated 2nd April 2015 in respect of the remaining 1,334 held by Shmuel Peled and a share certificate dated 2nd April 2015 issued by Audley Limited to Shmuel Peled in respect of the 1,334 shares held in trust for him and annual returns dated 15th February 2016 indicating the transfer of 3,666 shares on the 2nd April 2015 by Garwood Limited (held for the respondent) This demonstrates that subsequent to 2nd April 2015, the shareholding of the company was 8,666 shares held by Garwood Limited (in trust for the respondent) and 1,334 shares held by Tanwood (in respect of Shmuel Peled) and there is no evidence whatsoever as to the shareholding of both Bursa Limited and Queen Foreign-Affairs.

The applicants later relied on the company search they carried out in 2016 which showed that by 16th May 2016, the shareholding had changed and Tanwood Limited was holding 1,334 shares, Queen- Foreign Affair Limited holding 6,000 shares and Garwood Limited holding 2,666 shares. The only logical conclusion from this is that Garwood transferred 6,000 shares to Quee-Foreign Affairs and it stayed with 2,666 shares. Since by 2015, the share holding of the company was shown to be Tanwood and Garwood, the sudden change to include Queen- Foreign Affairs Limited occurred in 2016, an evident in contempt of the 19th October 2015 restraining order.

The respondent argued that the said transfer was done in 1997 where the respondent company sold shares to Bursa Limited and actually attached the share sale agreement. However, they did not prove the fact that Bursa Limited later sold the said shares to Queen-Foreign affairs Limited.

I am inclined to agree with Counsel for the applicant that the above is not true. If indeed the 60% shares were held by Bursa or Queen-Foreign Affairs, then this would have been reflected in the company annual returns on record. How is it that a share holder holding 60% of the company shares is not reflected in the annual returns of the company for a full eight years and finally shows up after 2016 on the certificate of incumbency. I am of the opinion that the 60% shares were transferred in 2016.

Relying on the case of ***Stanbic Bank (u) Ltd & Jacobsen Power Plant Ltd Vs Uganda Revenue Authority MA 42/2010*** and the case of ***Hon. Sitenda Sebalu Vs Secretary General of the East***

African Community Ref No. 8/2012, there are several conditions necessary in order to prove contempt of court to wit:-

- ❖ *Existence of a lawful order.*
- ❖ *The potential contemnor's knowledge of the order.*
- 5 ❖ *The potential contemnor's failure to comply i.e. disobedience of the order.*

Under the case under review, there exists a lawful order passed by this court on the 20th May 2017 clearly restraining the respondents from in any way dealing in the shares they held in Audley Limited.

10 Audley Limited being party to the suits was aware of the ruling. The respondent argued that the judgment was not served on the shareholders and directors of the company in Isle of Man and that it cannot be effective on them without the ruling being registered under the Judgment (Reciprocal Enforcement Isle of man) Act 1968.

15 It should be noted that Audley Limited was duly registered under the provisions of Part VI of the Companies Act 2012 and was at all material times represented by Counsel in Misc Appl No. 831 of 2015 where the restraining order was made. In my view it was therefore not necessary to serve Audley Limited and its Directors in the Isle of Man as submitted by Counsel for the respondent.

20 Further since the respondent had submitted to jurisdiction of this court he was dully bound to obey any order made by the court until it was discharged. I should add that the nature of this obligation is that it even extends to cases where the person affected by it believes or has reason to believe that the order is irregular or even void (see ***Hadkinson Vs Hadkinson [1952] ALL ER 567***).

In any event its trite law that any party who knows of an order whether null or regular or irregular is not permitted to disobey it and should not be the judge to determine whether an order is null or irregular but should instead apply to court to be discharged (see ***L.C.Chuck and Cremier [1896] E R 885***).

25 As already stated, evidence on record shows that the respondent failed to comply with the order of court and went ahead and altered the share holding of Audley Limited which was in contempt of this court's ruling.

Accordingly, I find that the respondent was in contempt of the restraining order of this court dated 19th October 2015 restraining him from transferring, alienating and or disposing of the 60 % shareholding in Audley Limited.

The applicant also sought a declaration that the respondent is in contempt of the same order of this court restraining him from interfering directly or indirectly with the operations of Kampala Casino and Pyramids Casino other than through duly convened ultimate beneficial shareholder meetings as pleaded and or meetings of the current registered Ugandan operations Directors by having caused or permitted (as the 86.6% registered beneficial shareholder of Audley Limited) the foreign Directors of Audley Limited to purport to issue a Power of Attorney to Yigal Zikha to carry on the day to day operations of Kampala Casino and Pyramids Casino on its behalf.

The ruling also restrained the respondent from direct interference in the operations of Kampala Casino and Pyramid Casino.

The applicants led evidence to show that the foreign directors of Audley Limited issued a Power of Attorney dated 3rd February 2016 appointing one Yigal Zulkha as the Attorney of Audley Limited with powers to, *inter alia*, carry on the day to day operations of Kampala Casino and Pyramid Casino, change the Casino management and take over operation of the Casino bank account.

This is again in my view in direct contempt of the court ruling.

Remedies

The applicant sought the following orders;

One, that this honorable court do disregard the purported transfer (effected subsequent to the restraining order) of the said 60% shareholding from the name Garwood Limited to the name of Queen-Foreign affairs Limited.

Secondary an order that by reason of the said contempt this honorable court do disregard the purported power of attorney dated the 3rd February 2016 issued in contempt of the restraining order of this court and the matter be adjudicated based on the position prior to the contempt.

The applicant further sought the respondent to pay UGX 100,000,000/= as a fine payable to the state and collectable by execution as punishment for the contempt of court. They relied on the

decision in *Stanbic Bank (U) Limited & Anor Vs the Commissioner General, Uganda Revenue Authority* where court exercised its judicial discretion and ordered the contemnor to pay UGX 100,000,000/= to the Registrar of High Court in order to purge the contempt.

5 Having found the respondent in contempt of a court order as set out above, the purported transfer of shares in Audley Limited will be disregarded till the determination of H.C.C.S No. 651 of 2015.

Further the purported Power of Attorney dated 3rd February 2016 will have no effect whatsoever till the determination of H.C.C.S No. 651 of 2015.

I however decline to impose a fine or penalty on the respondent for his contempt.

The respondent will pay the applicant costs of the application.

10 I so order

B. Kainamura

Judge

15 **30.06.2017**