

5

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

**MISCELLANEOUS APPLICATION NO 29 OF 2017**

*[Arising From Misc. Application No. 632 of 2015]*

10

*[Arising From Civil Suit No. 221 of 2014]*

**1. EKISA GEORGE  
2. OMUKENYO GEORGE COSMOS and 50,000 ors :::  
APPLICANTS**

15

**VERSUS**

20

25

30

35

**1. BANK OF AFRICA (U) LTD  
2. BANK OF BARODA (U) LTD  
3. BARCLAYS BANK (U) LTD  
4. CAIRO INTERNATIONAL BANK (U) LTD  
5. CENTENARY BANL (U) LTD  
6. CRANE BANK (U) LTD  
7. DFCU BANK (U) LTD  
8. DIAMOND TRUST BANK (U) LTD  
9. ECO BANK (U) LTD  
10. EQUITY BANK (U) LTD  
11. UGANDA FINANCE TRUST BANK (U) LTD  
12. HOUSING FINANCE BANK (U) LTD  
13. KENYA COMMERCIAL BANK (KCB)  
14. GLOBAL TRUST BANK (U) LTD  
15. OPPORTUNITY BANK (U) LTD  
16. ORIENT BANK (U) LTD  
17. POSTAL BANK (U) LTD  
18. STANBIC (U)NLTD  
19. STANDARD CHARTERED BANK (U) LTD  
20. TROPICAL BANK (U) LTD**

**21. UNITED BANK OF AFRICA (U) LTD :::::::::::::::::::::  
RESPONDENT**

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

**RULING**

5

This ruling arises from an application brought under Order 44 rules 3 and 4 and O.52 r.1 & 3 of the Civil Procedure Rules. The applicants are seeking for orders of leave to appeal against the ruling and orders of this Court made on 15<sup>th</sup> December 2016 in  
10 Misc. Application No. 632 of 2015(arising from Civil Suit No. 221 of 2014) be granted, proceedings in Civil Suit No. 221 of 2014 be stayed pending the hearing and determination of the intended appeal and costs be provided for. The application is supported by the affidavit of Josephine Nalusimbi.

15 The brief facts of the case are that the applicants sued the respondents for recovery of bank deposits charges being money had and received over the years. When the matter came up for hearing, Counsel for the applicants applied to court to enter judgment on admission for the applicants. This court dismissed  
20 the application on 19<sup>th</sup> December 2016 and the applicants being dissatisfied with the ruling seek leave to appeal against it and stay the proceedings in the main suit until the appeal is heard and determined.

The grounds on which the application is based on are;

Firstly that the applicants are dissatisfied and aggrieved by the ruling by which this court dismissed the applicant's application for judgment on admission, that the determination of the application for judgment on admission had the effect of  
5 conclusively determining the main suit; that the applications have arguable points of law meriting an appeal so that the Court of Appeal makes pronouncement on the matters on which the high court dismissed the applicant's application for judgment on admission.

10 The applicants have strong arguable points of law with high chances of success to be determined by the Court of Appeal arising from the ruling and orders.

On behalf of the 20<sup>th</sup> respondent, Nasif Mubiru, the Senior Legal Officer of the 20<sup>th</sup> respondent swore an affidavit in reply in which  
15 she deponed that the appeal does not have strong arguable points of law and it does not have a high chance of success on the basis that the 20<sup>th</sup> respondent did not make an unequivocal admission in the written statement of defence and the main suit should proceed and the matter be finally determined; that the  
20 application is an abuse of court process, it is misconceived and should be stuck off and that the 20<sup>th</sup> respondent is prejudiced by the delay of the proceeding in the main suit.

On behalf of the 1<sup>st</sup> to 11<sup>th</sup> , 18<sup>th</sup> and 21<sup>st</sup> respondents, David Semakula Mukiibi an Advocate with MMAKS Advocates swore an  
25 affidavit in reply to the application wherein he deponed that,

the application is a blatant abuse of court process as it aims to cause inordinate delay in finalization of the H.C.C.S No. 221 of 2014 (the main suit), the respondents did not make admissions and that the question of whether the bank charges are illegally levied is the main issue in the main suit and was indeed recorded as such in the joint scheduling memorandum filled on the 28<sup>th</sup> September 2016; that under paragraph 6(iv) to (xv) of the applicant's affidavit in support, the applicants set out the questions which they will seek the Court of Appeal to determine and none of those questions were in issue and / or ruled upon in Misc. Application No. 632 of 2015. The applicants cannot accordingly seek to appeal matters that are yet to be tried by this honorable court; that for the above reasons, the applicants intended appeal has no likelihood of success and it does not raise any question that merit serious judicial consideration; that the main suit has been fixed for hearing. That the proceeding should not be stayed as the hearing of the main suit will finally determine all the matters in issue and that points the applicants will if dissatisfied with the outcome have right to appeal against the decision of this honorable court.

On behalf of the 17<sup>th</sup> respondent, Rebbeca Kasolo, the Legal Manager of the 17<sup>th</sup> respondent swore an affidavit in reply where she deponed that the intended appeal raises no question whatsoever of a great and general importance; that the averments contained in paragraph 6(i-iv) (x-xv) of the affidavit are not appealable matters because this honorable court has not

yet pronounced itself in regard to them, that the applicants seeks to introduce a fresh suit within an appeal which is totally contrary to the law; that the application has no probability of success whatsoever and the main suit shall be rendered  
5 nugatory if the leave to appeal is granted, the respondents right to a fair hearing shall be heavily clogged and prejudiced if the application is granted.

On behalf of the 12<sup>th</sup> respondent, Ssenyonga Fred the Legal Manager of the 12<sup>th</sup> respondent swore an affidavit in reply in  
10 which he deponed that the purported grounds laid out by the applicants to justify an appeal do not merit appellant jurisdiction consideration given that this court merely rejected a premature consideration of the issues in Civil Suit No. 221 of 2014 and in effect laid down grounds for all the parties to adduce proper  
15 evidence. He further deponed that the said grounds in paragraph 6 of the affidavit in support are the same as those which this court is ready and willing to try. That the application is merely an attempt to have the Court of Appeal prematurely assume jurisdiction over the same matter which is clear abuse of  
20 court process.

## **Ruling**

I have carefully considered the application together with the respondent's replies to the application submissions of respective Counsel and the authorities cited.

The grounds for the application for leave to appeal on a preliminary point were set out in the case of **Sango Bay Vs Dresdner Bank [1971] EA 17** where Spry V-P held that;

10                   *"As I understand it, leave to appeal from an order in civil proceedings will normally be granted where prima facie it appears that there are grounds of appeal which merit serious judicial consideration\_but where, as in the present case, the order from which it is sought to appeal was made in the exercise of a judicial discretion, a rather stronger case will have to be made out."*

15 Further, in the case of **Ayebazibwe Vs Barclays Bank Uganda Ltd & 3 Ors (Miscellaneous Application No 292 of 2014)** court held that;

20                   *"In order to determine whether there are grounds which merit judicial consideration on appeal, the applicant has to demonstrate the grounds of objection showing where the court erred on the question or the issues raised by way of an objection. It would therefore be necessary to set out what the controversy before the court was and how it determined that controversy. For leave to appeal to be*  
25                   *granted, the applicant must demonstrate that there are*

*arguable points of law or grounds of appeal which require serious judicial consideration on appeal arising from the decision of the court on the controversy. It is necessary to set out the controversies upon which the court ruled and the grounds of the application which dispute or contest the correctness of the decision of the court on each controversy. Such grounds should be capable of forming the grounds of appeal deserving of serious consideration by the appellate court”.*

10 The initial application was for this court to give a judgment on admission. Counsel for the applicants argued that the respondents had admitted to charging and or continue to charge bank charges against the applicants and the members of the public under the pretext that the law does not prevent them. It was my view that the respondents had not made any admissions meriting a judgment on admission. There was a need to make out a case regarding the illegality yet the law requires the admissions to be sufficient requiring no further proof. Further the admissions were not capable of disposing off the entire suit as required by the law. I accordingly dismissed the application and the suit was set down for hearing.

One of the grounds that the applicants based the present application was that the applicants have arguable points of law meriting an appeal.

Counsel for the applicants set out the points of law to be determined by the Court of Appeal including; that the Court of Appeal shall be requested to determine whether the admissions were sufficient to warrant court to enter judgment on admission  
5 to dispose off the suit pursuant to Order 13 of the Civil Procedure Rules; that the Court of Appeal shall be requested to determine that the respondents sufficiently and unequivocally admitted charging the applicants and the general public bank deposits charges and the Court of Appeal shall be requested to  
10 determine that the admissions were sufficient for this court to enter judgment on admission because there were no other facts required to determine whether or not the admissions were unequivocal.

It was my view that the respondents admissions must be in  
15 regard to the claim and not a simple admission to a fact in the pleadings. The respondents stated in their WSD that they indeed charge the bank charge, it is a matter of public knowledge, anyone who has ever banked is aware of the bank charges. This admission was merely to a fact and not to the claim by the  
20 plaintiff that the charge was illegal so as to merit a judgment on admission. While the respondents agreed to the bank charge, they did not agree to its illegality. They actually argued that it is levied legally. No arguable point of law has been raised here about whether I was wrong to conclude that the admissions were  
25 not sufficient to merit a judgment on admission. The applicants



have not shown the point of controversy in the ruling that they seek the Court of Appeal to determine.

In the case of **Ayebazibwe Vs Barclays Bank Uganda Ltd & 3 Ors (Miscellaneous Application No. 292 of 2014)** (supra)  
5 court held that

“...arguable points should arise from the ruling of the court and not on something which was not in controversy raised before and which the court did not and could not have  
10 determined”.

This therefore means that the application for leave to appeal should raise arguable points of law from the ruling itself. In the instant case, the applicants raise several points of law that are not the points of controversy in the former application. For  
15 instance, the applicants raised points of law like; whether the appeal raises novel points of law of great importance that affect the applicants and many citizens of Uganda and the economy generally; whether it is lawful to use a bank deposit slips (alleged contracts) against the third party customers who are not only  
20 privy to the respondents customer’s contracts; whether the charging was unlawful; whether the alleged contracts are contracts of adhesion.

Further the applicants raised points that they want the Court of Appeal to consider; the appellant court shall be requested to  
25 determine the lawfulness of the alleged contracts between the respondent banks and the respective third party customers by

imposing mandatory financial obligations against third parties who are not privy to their customers' contract; the Court of Appeal shall be asked to determine whether or not all these admitted administrative impediments do not prevent the applicant's fundamental rights to education and other public services; the appellate Court shall be requested to determine whether the said admitted charges do not amount to double charging from both the applicants and the respondents customers hence illegal unjust enrichment; the Court of Appeal shall be requested to determine whether the admissions were sufficient to warrant court to enter judgment on admission to dispose off the suit pursuant to Order 14 of the CPR; the Court of Appeal shall be requested to determine that the respondents sufficiently and unequivocally admitted charging the applicants and the general public bank deposit charges; These are all points of law that were not a center of controversy in the former application and are yet to be determined in the suit. I accordingly find no merit in them. The ruling was restricted to issues of admission of the bank charges which was the point of controversy.

None of these points that the applicants seek the Court of Appeal to determine arise from the ruling in Misc. Application No. 632 of 2015. The respondents cannot seek to appeal matters that were not a point of controversy in the former ruling. The applicant still has a hearing where he can raise all the points for determination.

I have failed to find any arguable point of law being raised in the application on the basis of my finding that the admissions were not sufficient to merit a judgment on admission. I accordingly find that the applicants have no strong points of law meriting  
5 serious judicial consideration.

In conclusion therefore, I dismiss the application for leave to appeal the ruling of this court in Miscellaneous Application No. 632 of 2015. The application to stay proceedings therefore does not arise. The main suit should be set down for hearing.

10 Costs of this application shall be in the cause.

It is so ordered.

**B. Kainamura**

15 **Judge**

**13.09.2017**