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**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**[COMMERCIAL COURT]**

**MISC APPLICATION No. 316 OF 2017**

*(Arising out of Civil Suit No. 84 of 2014)*

10 **SABIITI ERIC ::: APPLICANT**

**VERSUS**

**KAMPALA CAPITAL CITY AUTHORITY ::::::::::::::::::::::::::::::::::: RESPONDENT**

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

**RULING**

15 This application was brought by the applicant under Section 98 of the CPA and Order 52 Rules 1  
&3 Of the CPR for orders that;

I. The consent judgment entered into by the parties herein in the main suit be varied to indicate that the settlement reached was strictly and solely in respect to the severance package and terminal benefits but does not include the items in the applicants claim in the  
20 plaint.

II. Costs of this application be provided for

The grounds of this application are that;

- The applicant and respondent entered into a consent judgment in the main suit herein which was endorsed by the court on 11<sup>th</sup> June 2015.
- 25 • The said consent judgment indicated that it was in full and final settlement of the applicants’ claim for severance and or terminal benefits.

- The applicant sued the respondent for other claims which he believes that he is entitled to from the respondent and for which the consent judgment should be varied to reflect that fact.
- It is just and equitable that the Honourable Court varies the said consent judgement to indicate that it is a partial consent judgment strictly in respect to severances package and terminal benefits.

In reply to the application, the respondent deponed that the applicant filed HCCS No. 84 of 2014 seeking special damages, general damages, exemplary damages interest and costs of the suit for breach of contract of employment and unlawful dismissal and termination among others, against the respondent.

That by negotiations, a compromise between the applicant and respondent the parties of their own free will reached a settlement on the 10<sup>th</sup>, June 2015, the terms of which were reduced into a consent judgment.

That the parties negotiated a full and final settlement of the applicant's claims in the suit. Pursuant to the terms of the consent judgment, the respondent has already made full payment to the applicant and hence this application is misconceived, lacks merit and seeks to reopen the case for fresh determination.

The facts in the matter at hand were that the applicant, a former employee of the respondent's/predecessor in title, Kampala City Council, sued the respondent in the main suit herein for unlawful dismissal from employment and sought among other things: withheld salary, severance package, transport, terminal benefits, pension, payment for all

earned and accrued leave carried forward for every year of employment, general damages and costs of the suit, among other things.

Before the hearing of the matter commenced, the respondent proposed and the applicant agreed to enter into a partial consent in respect to which the respondent paid to the applicant his withheld salary while on interdiction. The parties then agreed to litigate on the other claims of the applicant. Following a series of meetings between the parties and appearances before court, the parties once again agreed on all issues and did in fact enter into a consent judgment on the 10<sup>th</sup> of June 2015.

The applicant has since filed this application seeking a variation of the consent judgment.

**10 The Issues for determination;**

- 1) *Whether the payment made to the applicant under the said consent judgment was in full and final settlement of all of the applicant's claims in the main suit.*
- 2) *What remedies are available to the applicant?*

**15 Resolution of Issue 1**

It was the submission of Counsel for the applicant that the payment referred to and made to the applicant under clause 1 of the consent judgment between the parties was in respect to severance package and or terminal benefits strictly and solely but not the other claims.

Counsel further submitted that the consent judgment clearly indicated that the sum of UGX 18,184,878/- was strictly in respect to settlement of the plaintiff's/applicants claim with respect to severance package and or terminal benefits and that the rest of the claims were not settled by that payment. Further that it is imperative to note that the consent judgment was arrived at after a proposal made by the respondent's Directorate of Legal Affairs to its

Management Executive Committee for approval to settle the applicant's suit since evidence clearly showed that he had been unlawfully dismissed by the respondent. That the law governing termination of local government staff, Section 61(2) of the Local Governments Act states that;

5 “an employee whose services are terminated by the council contrary to the terms and conditions of service shall be entitled to the following benefits;

a) *one year’s gross pay in lieu of notice;*

b) *pensions in accordance with the Pensions Act;*

c) *basic salary in lieu of all earned and officially carried forward leave;*

10 d) *severance package equivalent to six months’ basic pay for every completed year of service;*

e) *transport expenses at the rate equivalent to one currency point for every five kilometers from duty station to the employee’s home district headquarters;*

15 f) *Transport expenses at the rate equivalent to fifteen currency points from the home district headquarters to the employee’s home village.*

Counsel for the applicant further submitted that from the above provision which is couched in mandatory terms, the payment made to the applicant did not cover all of the items that he is entitled to. Furthermore, the calculation used by the Respondent to arrive at the above figure clearly indicated that so many of the applicant's entitlements were not paid. A clear  
20 breakdown of the entitlement would show that the applicant is entitled to an excess of UGX 140,000,000/=.

In support of the above Counsel relied the case of ***Makula International Ltd Vs His Eminence Cardinal Nsubuga &Another (1982) HCB page 11*** where it was held that courts cannot condone an illegality once it is brought to its attention. Counsel invited court

to hold that clause 1 of the consent judgment was clearly in respect to what it says, which is, in respect to severance package and or terminal benefits.

Counsel for the respondent opposed the application for being incompetent and tantamount to an abuse of court process and prayed that it  
5 be dismissed with costs to the respondent.

It was Counsel for the respondents submission on the first issue that the payment made to the applicant under the said consent judgment was in full and final settlement of the entire applicants' claims in the main suit. Further that in the several meetings and appearances before court, the applicant agreed to forego claims for interest and general  
10 damages and entered into a consent agreement with the respondent where he accepted payment of UGX 18,184,878/= in full and final settlement of the plaintiffs claim.

On the applicability of **Section 61 of the Local Governments Act** in this matter it was Counsel's submission that the applicable legislation is the Kampala Capital City Authority Act.

15 **Resolution of Issue 2**

Counsel for the applicant while submitting on the issue two cited the case of *Hirani Vs Kassam (1952) EA 131* and pointed out that a consent judgment can be varied if it was given without sufficient material facts or misapprehension or ignorance of material facts or in general for a reason which would enable a court to set aside an agreement. Counsel  
20 submitted that in the instant case, the consent judgment entered into with the respondent it is clear that not all the applicant's claims were settled and that court should allow the parties to litigate on those items which were not settled in full in accordance with the precise and unambiguous wording of the consent judgment.

On his part Counsel for the respondent submitted that once Judgment was entered upon the terms in the consent agreement on the 11th day of June 2011, the judgment sealed the compromise between the parties and it cannot be varied.

Further that however the law does provide for circumstances where court may feel obliged to vary its order but the party seeking such relief must satisfy court that there has been a material change of circumstances since the making of the order or that court was misled in some way in relation to the facts of the case.

Still further that it is therefore not open to the applicant to re-open the matter or reargue the terms of the consent Judgment by relying on the same set of circumstances which was available to him at the time of entering the agreement but for which ever reason he or the legal representative ignored.

That the affidavit in support of the application sworn by the applicant does not disclose any element of fraud or collusion, inconsistency or opposition to the policy of court or that there is a ground in that consent that would ordinarily vitiate a contract in reaching the consent.

Counsel for the respondent also cited the case of ***Kengroup of Companies Ltd Vs Standard Chartered Bank & 2 ORs, H.C.M.A 116 of 2012*** where court citing the case of ***Hirani Vs Kassam 1952 EA 313***, emphasized that a Consent judgment derives its legal effect from the agreement of the parties and may only be set aside on the same grounds upon which a contract may be set aside or rescinded because it is “governed” by the ordinary principles that govern a contract. Such grounds include collusion, fraud and any other reason that would enable the court to vary or altogether rescind the contract.

Further Counsel for the respondent submitted that it is not tenable that the applicant now seeks to find fault with the said consent judgment to seek further benefit. In ***Verchures Creameries, Limited Vs Hull & Netherlands Steamship Company, Limited (1921) 2 KB at Pg. 612, Scrutton LJ*** stated that;

5            "A person cannot say at one time that a transaction is valid and there by obtain some advantage, to which he could only be entitled on the footing that it is valid, and then turn around and say it is void for the purpose of securing some other advantage".

Counsel urged that the applicant is therefore precluded from bringing such application.

In addition the Counsel for the respondent cited **Section 7 of Civil Procedure Act Cap 71** which  
10 is to the effect that, court shall not 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.

15 Counsel further relied on the case of ***Julian Galton Fenzi Vs Nabbosa Natasha Marie Misc Cause No.6 of 2012 (Family Division)***, where court emphasized in that matter, that, the applicant should have exercised all due diligence to litigate on all issues which properly belonged to the subject of litigation during subsistence of the case. Counsel urged that court finds that the decision in the foregoing case applies *mutatis mutandis* to the matter at hand and  
20 proceeds to dismiss it.

In my view a Consent Judgment is legally binding to the parties that signed it. This same matter was heard in court and both parties agreed and signed against the agreement and court thereby passed it as a Judgment. Therefore the applicant cannot be seen to bring back the same matter

before court. In fact, to emphasize the perimeters envisaged under **Section 7 CPA** above, I will refer to the case of **Posiyano Semakula Vs Susane Magala [1979] HCB 90** where the Court of Appeal held inter alia that:-

5           *“In determining whether or not a suit is barred by res judicata the test is whether the plaintiff in the second suit is trying to bring before the court in another was in the form of a new cause of action a transaction which has already been presented before court of competent jurisdiction in earlier proceedings and which has been adjudicated upon. If this is answered affirmatively the plea of res judicata will then not only apply to all issues upon which the first court was called upon to adjudicate but also to every issue which*  
10           *properly belonged to the subject of litigation and which might have been raised at the time through the exercise of due diligence by the parties”.*

It is important to note that a consent judgment derives its legal effect from the agreement of the parties, and may only be set aside on the same grounds upon which a contract may be set aside or rescinded because it is governed by the ordinary principles that govern a contract. It is clear that  
15           the applicant has not proved any grounds to warrant setting aside the Consent Judgment.

In the result this application is dismissed with costs.

20           **B. Kainamura**  
              **Judge**  
              **03.05.2018**