

5 **THE REPUBLIC OF UGANDA**

IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA

MISC. APPLICATION NO: 1341 OF 2017

(COMMERCIAL DIVISION)

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MK CREDITORS LIMITED ::::::::::: PLAINTIFF/APPLICANT

VERSUS

KAZOOBA FRANCIS ::::::::::: DEFENDANT/RESPONDENT

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BEFORE HON.JUSTICE OYUKO ANTHONY OJOK

RULING:

This is an application brought by Notice of Motion under the Civil Procedure Rules and Section 98 of the Civil Procedure Act Seeking for the Following orders:-

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- a) That the Respondent's Written Statement of Defense be struck out.
- b) Summary Judgement be entered in favor of the Applicant.
- c) In the alternative, Judgement on admission be entered against the Respondent in the sums of UGX 10,069,520/= Only
- d) Costs of the suit be provided for.

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The grounds on which the Application is based are elaborately contained in the affidavit of Male Mabirizi, the Applicant's Managing Director and shall be read and relied upon during the hearing but briefly are that;

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- 1. The Respondent's Written Statement of Defense is frivolous and vexatious
- 2. The Respondent failed to make specific responses to the Applicant's plaint
- 3. The Respondent's Written Statement of Defense contains general and evasive denials
- 4. The Respondent does not deny agreeing to pay UGX10,069,520/= only.

This was further elaborated in the affidavit in support of Mr. Male Mabirizi, the Managing Director of the Applicant.

The application was vehemently opposed by the Respondent in his affidavit in reply.

REPRESENTATION:

5 Mr. Male Mabirizi, the Managing Director of the Applicant Company appeared for the Applicant
Counsel Rwakafuzi appeared for the Respondent

Before the commencement of the proceeding, Counsel for the Respondent raised a preliminary objection pertaining to the right of Mr. Male Mabirizi's locus to appear and present the case as counsel for the Applicant.

10 **SUBMISSION:**

Mr. Male submitted that he didn't know why we were in court because court had made some orders when the matter had come up on the 19/06/2019, directing that he engages a lawyer to present the case on behalf of the Applicant.

15 He therefore stated that as a result of the order which he did not agree with, he wrote a letter dated 03/07/2019 addressed to the Registrar and with attention to me and copied to the Principal Judge.

20 He stated in his letter that any attempt to further hear this matter by the same Court would amount to derogation of his right to fair hearing and cited several authorities to support his argument among which include; Article 28(1), Article 44, Article 126 of the Constitution, Order 3 Rule 1, Order 29 Rule 1 of the Civil Procedure Rules, Section 98 of the Civil Procedure Act, Section 55 read together with Regulation 80 of Table A of the Companies Act, Section 20 and Section 33 of the Judicature Act.

25 Counsel Rwakafuzi in reply submitted that Mr. Mabirizi has no locus what so ever since he is not a practicing advocate. He stated that the manner in which the Applicant's representative, Mr. Mabirizi behaves shows an intention to delay the matter rather than it being heard on it's merits. That due to this, it is becoming so costly.

In rejoinder, Mr. Mabirizi maintained his earlier on submissions.

Resolution

True, on the 19/06/2019 at 2:00pm Mr. Male Mabirizi, the Managing Director of the Applicant appeared for the Applicant and Counsel Rwakafuzi appeared for the Defendant

- 5 Court ordered that Mr. Mabirizi engages an Advocate to represent the Company, since he does not have locus to appear before him and also produce the Company's Money Lending Licence.

Mr. Mabirizi today, on the 11/07/2019 raised two points and these are;

1. He has no lawyer, he will not engage one and therefore, he would represent the Company.
- 10 2. That he had written a letter to the Registrar, Commercial Division with attention to me, which later is dated 03/07/2019.

In the above stated letter, he asked the Principal Judge to prevail over me so that he is allowed to represent the Company as it's Advocate.

- 15 Upon receipt of this letter, the Principal Judge responded stating that he had already allocated the matter before me and therefore could not direct me as to how to conduct the hearing.

The above decision by the Principal Judge is in line with Section 20 of the Judicature Act and Article 128(1)(2) of the Constitution that provide for the independence of the Judiciary and the Judicial Oath. It provides that courts shall be independent and shall not be subject to the control and direction of any person or authority.

- 20 Section 20 of the Judicature Act provides for distribution of business in the HighCourt whereby, the Principal Judge has the powers to allocate duties to the judges but can not direct them on how to do the same.

- 25 Article 28 and Article 44(c)of the Constitution as relied on by Mr. Mabirizi have been misplaced since no one has denied the Applicant the same. All Court directed was for the Applicant to engage an Advocate but the Applicant has never been denied an opportunity to be heard by this Court. Reason being, this is a Company which has a separate legal entity from him as a person,

secondly, there was no resolution. This was also the decision in the case of **Allied Irish Bank Plc Vs Aqua Fresh Fish Ltd[2018] IESC and in the case of ABSE &Ors Vs. Smith & Anor(1986) ALL ER** In which an appeal against the decision of the High Court was dismissed with the assertion that the right of audience was reserved to Advocates, Barristers or litigants appearing
5 in person.

Order 3 Rule 1 provides that “Appearances may be in person, by recognized agents or Advocates”. Rule 2 provides that “A recognized agent must be a person holding power of attorney or a person carrying on trade or business for and in the names of the parties, not resident within the local limits of the jurisdiction of the Court....”

10 This means that Mr.Mabirizi would have acquired a Power Of Attorney duly registered, which he didn’t possess. Secondly, the parties in the memorandum are not outside the jurisdiction of this Court. Even if they were outside, there was no proof that was tendered in Court. A recognized agent has limited rights before a court.

Even if he possessed a power of attorney, it would be setting a bad precedent to allow somebody
15 holding a power of attorney to represent a Company as an Advocate. Otherwise, Court would be full of lawyers who are not regulated by Uganda Law Council hence misleading the unsuspecting public. Moreover, there would be no need for Law Development Centre since there would be no need for joining it.

Mr.Mabirizi in his submission also cited Order 29 Rule 1 which provides for signing of
20 documents by a secretary, Director or other Principal Officer of the corporation, but the preliminary objection raised before court is about having locus to appear as an Advocate, on behalf of the Applicant Company.

Section 55 of the Companies Act which Mr. Mabirizi relied on provides for power to pay certain commissions; prohibition of payment of all other commissions; discounts etc. Even Part 1 of
25 Table A together with Regulation 80(1) of the Companies Act cited by Mr. Mabirizi is misplaced.

Article 126(1) of the Constitution cited by Mr.Mabirizi provides that judicial power is derived from the people and shall be exercised by the Courts, established under the Constitution in the

name of the people and in conformity with the law and with the values, norms and aspirations of the people.

Indeed the Principal Judge in line with Section 20 of the Judicature Act allocated the file to me and I entertained the matter but Mr. Mibirizi made it impossible by not engaging an advocate
5 despite giving him an ample time. And indeed, justice delayed is justice denied since this is a case of 2014.

Section 98 of the Civil Procedure Act which provides that “Nothing in this Act shall be deemed to limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.”

10 Section 33 of the Judicature Act provides that “The High Court shall, in the exercise of the Jurisdiction vested in it by the Constitution, this Act or any written law, grant absolutely or on such terms and conditions as it thinks just, all such remedies as any of the parties to a cause or matter is entitled to in respect of any legal or equitable claim properly brought before it, so that as far as possible, all matters in controversy between the parties may be completely and finally
15 determined and all multiplicities of legal proceedings concerning any of those matters avoided.

I therefore find that this is wastage of Court’s time, litigation should come to an end and as such, I find merit in the Preliminary Objection and therefore, the matter is dismissed with costs to the Respondent.

Right of appeal explained.

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Dated at Kampala this 11th day of July 2019.

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Oyuko Anthony Ojok

25 Judge

Delivered in the Presence of:

1. Mr. Male Mbirizi for the Applicant
2. Counsel Rwakafuzi Muwema for the Respondent

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