THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(COMMERCIAL COURT DIVISION)

MISCELLANEOUS APPLICATION No. 217 OF 2021

(ARISING OUT OF HCT-00-CC-BM-009-2017)

RIFT VALLEY RAILWAYS (U) LIMITED:: APPLICANT

VERSUS

HASS PETROLEUM (U) LIMITED:: RESPONDENT

BEFORE HON. JUSTICE RICHARD WEJULI WABWIRE

RULING

The Applicant brought this application for review under the provisions of Section 91 of the Insolvency Act, Section 82 of the Civil Procedure Act Cap

71, and Order 52 Rule 1 of the Civil Procedure Rules S.I 71-1. The Applicant is seeking for the following Orders and for costs of the proceedings, namely:-

i) That the order issued by this honourable Court on 11th February 2021 placing Rift Valley Railways (U) Ltd under liquidation and the appointment of a liquidator be reviewed and set aside on the basis that the Applicant was not given an opportunity to be heard on the merits of the petition.

ii) That consistent with the ruling of Hon. Justice David Wangutusi and Article 28 of the Constitution of the Republic of Uganda, the Applicant be heard on the underlying Petition

The facts averred in support of the Notice of Motion are that on 13th October 2017, the Respondent filed a Petition for winding up of the Applicant on the basis of non-payment of a debt. That on 23rd May 2019, without proper service having been effected on the Applicant, the Respondent proceeded *ex parte* upon which the then learned trial Judge Justice David Wangutusi issued an order placing the Applicant under liquidation and appointed a Liquidator. Rift Valley Railways Investments (Pty) Limited, a shareholder in the Applicant Company, filed Misc Application No. 486 of 2019; RVR

Investments Pty Limited vs. Hass Petroleum & Anor which was argued interparty on 11th September 2019.

On 20th January 2021 Court delivered its ruling in Misc Application No. 486 of 2019 in which it set aside its orders on placing the Applicant under liquidation and appointment of a liquidator. On 3rd February 2021, MMAKS Advocates the lawyers of the Applicant were served with a Hearing notice in the Petition for Liquidation. On 11th February 2021 when the Petition came up for hearing, Counsel Ernest Sembatya for the Applicant applied for an adjournment to enable him to file an affidavit in opposition of the Petition. The Application for adjournment was vehemently opposed by the Respondent and consequently Court was required to give a ruling on the same. In its ruling, Court declined to grant the application for adjournment and proceeded to allow the Petition as presented by the Respondent. The Court issued orders placing the Applicant under liquidation and appointed a liquidator.

The Applicant through the Affidavit deponed by Ernest Ssembatya, an Advocate with MMAKS Advocates, avers that Article 28 of the Constitution of Uganda, 1995 guarantees the right to a fair hearing and that the Applicant was not accorded a fair hearing on the Petition. That there was no basis for Court to arrive at a finding that the Applicant had acknowledged the debt.

That in the event, the adjournment Counsel for the Applicant had sought for had been disallowed, the Applicant through his lawyers intended to raise three preliminary points of law related to; filing the petition without first subjecting the dispute to arbitration was premature, insolvency proceedings are not intended to be used as a basis for establishment of rights, the issue of acknowledgement of the debt by the Applicant was *res judicata*.

The Respondents through the affidavit deponed by Kafeero Alexander, a lawyer working with Okecha Baranyanga & Co. Advocates opposed this application. The Respondent contended that the ruling of this honourable Court in Misc. Application No. 486 of 2019 was delivered on 22nd January 2021. That the ground for adjournment advanced by Counsel for the Applicant was that he had only received instructions on Monday 8th February 2021 which was only three days from the date of the hearing. The Respondent/Petitioner's Counsel opposed the adjournment of the hearing on a number of reasons and among others that the Respondent/Applicant herein had admitted indebtedness and this being an insolvency petition there was nothing to adjourn about.

That when the matter was adjourned for ruling, the Respondent/Applicant herein filed in Court at 11:00 hrs. its affidavit opposing the Petition and the same was considered by the Court in its decision after making a holistic

appreciation and consideration of the context of the entire petition and ruling in Misc Application No. 486 of 2019. That since the reason to adjourn advanced by the Applicant/Respondent had been to file their affidavit in reply and now that they had filed it, the Court considered the petition on its merit since the reason for adjournment had been overtaken by events.

That the petition was heard interparty since evidence of the Application is by way of affidavit and in any case the Petitioner/Respondent herein had not intimated that it intended to cross examine the deponent of the affidavit in opposition considering that the deponent of the same was out of this jurisdiction. That there was no dispute as contemplated under the agreement and so there was nothing to refer for arbitration since the Applicant through its servants and or agents admitted the debt on court record and undertook to pay within 30 days.

In response, the Applicant herein through Counsel Ernest Sembatya deponed an affidavit in rejoinder and contended that on 11th February 2021, no arguments and/or submissions were made to the Court on the Bankruptcy Petition contrary to the order issued by Justice David Wangutusi that the Applicant be heard on the underlying petition.

Counsel for the both parties filed written submissions which I have considered as well as the authorities they have referred to. I will not reproduce all the submissions in this ruling, but I have carefully considered them before arriving at my decision.

Section 82 of the Civil Procedure Act Cap 71 under which this application was brought provides that;

"Any person considering himself or herself aggrieved—

(a) by a decree or order from which an appeal is allowed by this Act, but from which no appeal has been preferred; or

(b) by a decree or order from which no appeal is allowed by this Act,

may apply for a review of judgment to the court which passed the decree or made the order, and the court may make such order on the decree or order as it thinks fit."

Order 46 of the Civil Procedure Rules S.I 71-1 which applies to the instant application under Rule 2 stipulates that *"an application for review of a decree or order of a court, upon some ground other than the discovery of the new and important matter or evidence as is referred to in rule 1 of this Order,*

or the existence of a clerical or arithmetical mistake or error apparent on the face of the decree, shall be made only to the judge who passed the decree or made the order sought to be reviewed."

The grounds upon which an application for review can be made were enunciated in the case of **FX Mubuuke vs. UEB HCMA No.98 of 2005**. In that case Court observed that in an application for review the Applicant must prove to the satisfaction of Court that;

i) There is a mistake or manifest mistake or error apparent on the face of the record.

ii) That there is discovery of new and important evidence which after exercise of due diligence was not within the applicant's knowledge or could not be produced by him or her at the time when the decree was passed, or the order made.

iii) ***That any other sufficient reason exists.***

Further in the case of **Edison Kanyabwera vs. Pastori Tumwebaze, SCCA No. 6 of 2004**, the Supreme Court found that:-

"In order that an error may be a ground for review, it must be one apparent on the face of the record, i.e., an evident error which does not

require any extraneous matter to show its incorrectness. It must be an error so manifest and clear that no Court would permit such an error to remain on record. The error may be one of fact, but it is not limited to matters of a fact and includes also error of law."

The grounds which were presented by the Applicant in support of this application are that she was not accorded a fair hearing on the Petition. That there was no basis for Court to arrive at a finding that the Applicant had acknowledged the debt. That Court ought to have given a decision on the prayer for adjournment which Counsel for the Applicant had sought for. That in the event the adjournment had been disallowed, the Applicant through his lawyers intended to raise three preliminary points of law related to; filing the petition without first subjecting the dispute to arbitration was premature, insolvency proceedings are not intended to be used as a basis for establishment of rights, the issue of acknowledgement of the debt by the Applicant was *res judicata.*

The above grounds as presented by the Applicant neither constitute mistake nor error apparent on the face of the record nor amount to discovery of new and important evidence which after exercise of due diligence was not within the applicant's knowledge or could not be produced by him or her at the time when the decree was passed, or the order made. These are issues that were extensively and, in the opinion of this Court, properly addressed on

pages 3 to 9 of my ruling in Bankruptcy Petition No. 009 of 2017; Hass Petroleum Limited vs. Rift Valley Railways (U) Limited.

I have also examined the above grounds as presented and found the same not sufficient to cause a review of this Court's decision in the above matter. **Order 46 Rule 3 of the Civil Procedure Rules S.I 71-1** provides that where it appears to the court that there is not sufficient ground for a review, it shall dismiss the application.

In the premises, for the reasons given hereinabove, this Application has no merit at all. I accordingly dismiss it with costs and in consequence;

1. The orders issued by this honourable Court in Bankruptcy Petition No. 009 of 2017; Hass Petroleum Limited vs. Rift Valley Railways (U) Limited are upheld.

2. HCMA No. 217 of 2021; Rift Valley Railways (U) Limited vs. Hass Petroleum (U) Limited therefore stands dismissed.

3. The Respondent is awarded costs of this Application.

I so order.

Delivered at Kampala this 15th day of November 2020.

Richard Wejuli Wabwire

JUDGE