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THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
COMMERCIAL DIVISION
HCT-00-CC-CS-0296 OF 2020

10 JACKSON WABYONA PLAINTIFF

VERSUS

- 15 1. TULLOW OIL UGANDA
 - 2. TULLOW UGANDA OPERATIONS PTY LTD
 - 3. UGANDA REVENUE AUTHORITY
 - 4. ATTORNEY GENERAL OF UGANDA
 - 5. CURTIS, MALLET-PREVOST, COLT & MOSLE LLP (OC302168)
 - 6. FRESHFIELDS BRUCKHAUS DERINGER LLP (OC334789)
 - 20 7. THREE CROWNS (SERVICES) LLP (OC389628)
- DEFENDANTS

BEFORE: HON. JUSTICE DR. HENRY PETER ADONYO


RULING

25 **a. Background:**

The brought this suit against the Defendants seeking the following declarations and orders;

- a. A declaration that the Settlement Deed dated 18th June 2015 executed between the 1st, 2nd, 3rd and 4th Defendants is a breach and an infringement of the rule of law, good governance, transparency and accountability principle operational and applicable in Uganda
- 30 b. A declaration that the Settlement Deed dated 18th June 2015 executed between the 1st, 2nd, 3rd and 4th Defendants is illegal, void and a nullity

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- 5 c. A declaration that the execution of the Settlement Deed and subsequent
implementation by the 1st, 2nd, 3rd and 4th Defendants caused and/or
occasioned financial loss in the form of unpaid or uncollected taxes due
and payable by the 1st and 2nd Defendants to the Consolidated Fund
- d. An order quashing the Settlement Deed and expunging the same from all
10 public records in Uganda and elsewhere in the world where it is enforced
- e. A declaration that the 5th, 6th and 7th Defendants for liable for professional
negligence and/ or legal malpractice and ill advising the Government of
Uganda to execute the impugned Settlement Deed
- f. Assessment of the financial and monetary loss occasioned to the
15 Consolidated Fund of the Government of Uganda resultant from the
execution and implementation of the impugned Settlement Deed
- g. Collection by the 3rd Defendant and payment of the amount assessed in (f)
to the Consolidated Fund of the Government of Uganda as ordered by the
Tax Appeals Tribunal
- 20 h. Alternatively, an order attaching a lien over the 1st and 2nd Defendants
33.3334% stake in each of the Lake Albert development project licenses
EA1, EA1A, EA2 and EA3A and the proposed East African Crude Oil
Pipeline (EACOP) System as a mode of recovery of taxes assessed under (f)
thereof
- 25 i. Costs of the suit.


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b. Procedural:

The Defendants separately filed applications including Miscellaneous Applications No. 369 of 2020; Miscellaneous Application No. 371 of 2020; Miscellaneous Application No. 393 Of 2020; Miscellaneous application No. 399 of 2020 and Miscellaneous application No. 416 of 2020. Each of these applications have been considered separately and decisions made therein including on issues such as this court lacking jurisdiction over some of the defendants, the service of court process outside jurisdiction as laid down procedure in the Civil Procedure Rules.

The Applications also sought to strike out the plaint in this head suit of Civil Suit No. 296 of 2020, Jackson Wabyona vs Tullow Uganda Limited, Tullow Uganda Operations Pty Limited and 3 Others be struck out and dismissed on grounds that the Plaintiff has no locus standi, the plaint did not disclose a cause of action and was lis pendens.

Collectively, the applications sought the following orders;

- i. Setting aside the service of summons on the Applicant in High Court Civil Suit No. 296 of 2020
- ii. An order declaring that the summons has not been duly served upon the Applicant
- iii. The discharge of any order giving leave to serve the summons on the Applicant out of jurisdiction



- 5 iv. A declaration that in the circumstances of the case, the court has no
 jurisdiction over the Applicant
- v. High Court Civil No. 296 of 2020 be dismissed as against the Applicant
- vi. The Plaintiff in *Civil Suit No. 296 of 2020, Jackson Wabyona vs Tullow
10 Uganda Limited, Tullow Uganda Operations Pty Limited and Others* be
 struck out/rejected, as against the Applicant for not disclosing a cause
 of action and/or being barred by law
- vii. The Plaintiff has no *locus standi* to challenge the settlement deed by
 way of ordinary suit
- viii. The suit is in breach of the *lis pendens* rule and a blatant abuse of court
15 process

Each of the parties were directed and invited to file written submissions which they did and I thank them for the articulate arguments therein and the tireless effort put in providing the well-argued submissions.

20 This court ,however, after considerations of the pleadings in those applications,
 the submissions therein , the fact and the law allowed the applications filed by
 the applicants and in the process dismissed this head suit on the grounds that
 the Respondent therein and Plaintiff herein had before instituting this head suit
 not demonstrated that he had exhausted all the available other remedies legally
 available to an aggrieved person who is concerned with the fact of contravention
25 of public policy through judicial review and even other administrative remedies



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5 and as such the court found that Plaintiff does not have *locus standi* and had not demonstrated any cause of action.

The court also invariably noted that this head suit offends the *lis pendens* rule since it seeks and raises substantively similar claims, issues and remedies still pending adjudication before this court in HCMA No. 137 of 2017, which is yet to
10 be disposed of thus requiring that this head suit be stayed pending the completion of the former suit.

On the issue of service of summons outside the jurisdiction, the court found that the Respondent did not follow the proper procedure for service of summons outside jurisdiction as provided under Order 5 rules 22 and 24 of the Civil
15 Procedure Rules, this means that the said service of summons irregular within the meaning of Order 9 rule 3 of the Civil Procedure Rules. The court thus set aside the service of summons on the Applicant in High Court Civil Suit No. 296 of 2020 issued by the Deputy Registrar of this court in Miscellaneous Application No. 313 of 2020 and found that the summons in HCCS No. 296 of 2020 were not
20 duly served.

On the issue of jurisdiction, the Court found that it does not have jurisdiction over some of the Applicants thus dismissed this head suit on those grounds.

Finally this court having found for the Applicants in the various applications which arose from this head suit wherein the plaint in this head suit was struck
25 and dismissed has no alternative but to make consequential and declaratory orders in respect of this head suit as follows;


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5 **c. Orders**

1. The plaint in this HCCS No. 296 of 2020 is struck arising from;
 - a. The Plaintiff in HCCS No. 296 of 2020 has no *locus standi* to challenge the Settlement Deed by way of this ordinary suit.
 - b. The suit HCCS No. 296 of 2020 is in breach of the *lis pendens* rule.
- 10 2. High Court Civil No. 296 of 2020 is dismissed as against the Defendants.
3. The service of summons on the Applicant in High Court Civil Suit No. 296 of 2020 issued by the Deputy Registrar of this court in Miscellaneous Application No. 313 of 2020 is set aside.
- 15 4. Any order giving leave to serve the summons on the Applicant out of jurisdiction is discharged
5. Costs in this head suit is granted to the Defendants upon whom this court has declared that it has no jurisdiction on while the rest of the Defendants to bear own costs.

I do so order accordingly.

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HON. JUSTICE DR. HENRY PETER ADONYO

JUDGE

14TH JULY 2020

Hon. Justice Dr. H. P. Adonyo