

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
[COMMERCIAL COURT]
M.A No. 212 OF 2020
(Arising out of HCCS No. 150 of 2012)

SIMON PETER BBOSA:.....APPLICANT/PLAINTIFF

VERSUS

GEOFFREY KAZINDA:.....RESPONDENT/DEFENDANT

BEFORE: HON. JUSTICE DUNCAN GASWAGA

RULING

- [1] This is a ruling on an application brought under Section 98 CPA and Order 52 rules 1&2 CPR for orders that; *the applicant be granted leave to access the respondent's sites at Kitala (I) & (II) and at Kisubi, Wakiso District to enable a Valuation Surveyor to carry out a valuation of the metal works that the applicant carried out/ installed at the said sites; the respondent or his agents or representatives be directed to grant the applicant or his agents access to the respondent's sites/premises at Kitala (I)&(II) and at Kisubi, Wakiso District to enable a Valuation Surveyor to carry out a valuation of the metal works installed by the applicant on those sites/premises and for costs of this application.*
- [2] The grounds of the application were detailed in the affidavit of Simon Peter Bbosa and they were briefly that; the applicant filed HCCS No.

150 of 2012 against the respondent/defendant for payment of an outstanding balance on the contract price of metal works installed by the applicant on the respondent's site at Kitala I & II and at Kisubi, Wakiso District. That in the respondent's defence he stated that the value of the works executed by the applicant was assessed by SM Cathan at Ugx 319, 276,850/= and that the cost of completing the said works was Ugx 24,587,000/= as opposed to the Ugx 403,098,000/= that was being demanded by the applicant. This dispute in amount justifies the applicant's need to instruct his own valuation surveyor to carry out a valuation so as to assess the quantum/ value of metal works installed by the applicant on the said premises. Further, that the said valuation will aid court in reaching a fair and just conclusion in this case upon comparison with the respondent's valuation report. The respondent has on numerous occasions denied the applicant's valuation surveyor access to the said premises despite various requests but granting of these orders by this court would not prejudice the respondent since the hearing of the said case has not kicked off and it is just and fair that the application be granted.

[3] At the hearing of the application, the respondent did not appear in court and so did his lawyer despite service of court process on them. Court then granted the applicant leave to proceed exparte by way of written submissions.

[4] This application raises one issue;

Whether leave should be granted to the applicant to access the respondent's sites at Kitala I & II and at Kisubi, the subject of HCCS No. 150 of 2012, to enable a Valuation Surveyor to carry out

a valuation of the metal works comprised thereon on behalf of the applicant.

[5] It was submitted by Counsel for the applicant that it is necessary to have valuation of the existing metal works done by the applicant by an independent expert in order to secure a distinct expert opinion on the matter following the dispute on the value of the metal works. Such independent expert valuation would then assist court in evaluating the technical evidence on the quantum presented by both parties to the dispute. The applicant's submission was supported by Section 98 CPA and the case of **Ayub Suleiman Vs Salim Kabambalo, SCCA 32 of 1995** wherein it was stated inter alia that; "*in respect of the inherent powers of court under the then Section 101 of the Civil Procedure Act, that court can always invoke its inherent power to make orders that are necessary for the ends of justice or to prevent abuse of the process of court.*" The applicant further prayed for costs under Section 27(2) CPA for the respondent's frustration of the valuation process through continuously ignoring the requests for the same.

[6] I have carefully perused the pleadings and submissions on the record of court. It is apparent that the applicant sued the respondent for recovery of monies for payment of metal works executed by the applicant on the respondent's premises however, the monies involved are disputed hence the need for a valuation. Despite the various requests by the applicant to the respondent, the same has not been possible, the reason for the said application. Indeed the assessment and valuation of the works so far done on the premises would go a long way in assisting the court to reach a just decision. This cannot be done without allowing another or independent expert to access the premises

in question and carry out the valuation. I therefore find merit in the applicant's submission which stands unopposed.

[7] Accordingly, this application is granted. Pursuant to Section 98 of the Civil Procedure Act, I hereby order that the respondent grants access to the applicant to have the valuation of the metal works carried out. In the interest of justice it is ordered that the costs of this application shall be in the main cause.

I so order

Dated, signed and delivered at Kampala this ^{19th}~~16th~~ day of August, 2021



Duncan Gaswaga

JUDGE