



THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT KAMPALA  
(COMMERCIAL COURT DIVISION)

5 MISCELLANEOUS APPLICATION NO. 1177 OF 2020  
(Arising from CS No. 521 of 2019)

1. Bet city (U) Ltd
2. Jamal Sultan.....Applicants'

VERSUS

10 Swangz Avenue (U) Ltd.....Respondent

BEFORE THE HON. JUSTICE RICHARD WEJULI WABWIRE

RULING

The Application is brought under order 46 rules 1 and 2 of the Civil Procedure Rules and  
15 S.82 and 98 of the CPA Cap. 71 for orders that the consent judgment in civil suit No 521  
of 2019 entered on the 5<sup>th</sup> of February 2019 be reviewed and set aside; that execution of  
the decree arising from that judgment be stayed and for costs of the suit to be provided  
for. The application was supported by the Affidavit of Jamal Sultan the 2<sup>nd</sup> applicant. The  
Respondent filed an Affidavit in reply deponed by Julius Kyazze the Managing Director  
20 of the Respondent.

The Applicants' were represented by M/s T-Davis Wesley & Co. Advocates while the  
Respondent was represented by M/s Signum Advocates. The parties addressed court in  
written submissions.

In their submissions the Respondent raised three issues while the Applicants' raised only  
25 one issue which is similar to issue two of the Respondent The three issues are as follows:

1. Whether the Affidavit in Support of the Application should be struck out for being riddled with falsehoods?
2. Whether the consent judgment should be reviewed and set aside?
3. What remedies are available for the parties in the circumstances?

30 **Issue 1**

**Whether the Affidavit in Support of the Application should be struck out for being riddled with falsehoods?**

The Respondent's Counsel submitted that in the present case, the Applicant's Affidavit in support is riddled with falsehoods that are visible even on the face of it.

35 That paragraph 4 of the Applicant's Affidavit in support is a falsehood as the Applicants' allege that the Applicant made the payment of the aggregate sum to the Respondent That the said allegation is false as seen in Annexure B and Annexure C to the Affidavit in reply sworn by Julius Kyazze, the Respondent's Managing Director. That the 1<sup>st</sup> Applicant had only paid the 1<sup>st</sup> instalment under paragraph 2.2 of the Consent Judgment, and reneged  
40 on the payment. That the 1<sup>st</sup> Applicant, through its Directors, clearly indicated in an email to the Respondent's Advocates that the reality is that 5m is what is available and started making counter-proposals not envisaged in the terms of the consent judgment.

That the falsehood told in paragraph 4 is central to the Applicant's case since it is the basis of the assertion that the Applicants' are not indebted to the Respondent

45 That another falsehood is in paragraphs 5 and 6 of the Applicants'' Affidavit in support when they claim to have discovered that the Directors of the 1<sup>st</sup> Applicant are guarantors of the 1<sup>st</sup> Applicant yet they signed on every single page of the Consent Judgment. That

the 2<sup>nd</sup> Applicant's denial of the signatures on the other pages of the Consent Judgment except the one on the third page during cross examination was an attempt to deceive this  
50 Court. He prayed that Court expunge the offending Affidavit in support, off the record, for the falsehoods it contains and dismiss the Application it purports to support.

The applicant chose not to reply to this issue as they did not file an Affidavit in rejoinder to address the same.

**Order XIX Rule 3(1) of the Civil Procedure Rules, SI 71-1** provides as follows;

55 *"Affidavits shall be confined to such facts as the deponent is able of his or her own knowledge able to prove..."*

I have looked at paragraph 4 of the Applicant's Affidavit in support which the Respondent cites as containing falsehoods. It states that;

60 *'4. That indeed the 1<sup>st</sup> Applicant made payment of the said aggregate sums to the Respondent company.'*

The aggregate sums referred to can be seen in their preceding paragraph 3 which states that;

65 *'3. That on the 25<sup>th</sup> day of October 2019 the 1<sup>st</sup> applicant entered into a consent judgment wherein the 1<sup>st</sup> applicant company purportedly agreed to pay the Respondent an aggregate sum of Ushs. 183,433,100/ as full and final settlement of the Respondent's claim.'*

Paragraph 4 would therefore mean that the 1<sup>st</sup> applicant paid a sum of Ushs. 183,433,100/ to the Respondent, thereby fully settling their claim in the consent judgment.

Order XIX Rule 3(1) of the Civil Procedure Rules, clearly states that Affidavits shall be confined to such facts as the deponent is able of his or her own knowledge to prove.

70 In making this allegation, the Applicants' did not attach any evidence to prove the same. While on the other hand, the Respondent through paragraph 7 of their Affidavit in reply attached evidence showing that there was still an outstanding balance. The applicant did not file an Affidavit in rejoinder to refute this claim.

In the case of **Tom Mukalazi versus Davis Kisule (1995) KALR 860** court held that where  
75 there is no evidence for the defence, the Plaintiff's account of what happened has to be accepted. In the instant case where evidence is presented through Affidavits, since the Applicants' did not file an Affidavit in rejoinder, it follows that they had no objection to the evidence presented by the Respondent in their Affidavit in reply.

The other falsehood that was raised by the Respondent was in respect to paragraphs 5  
80 and 6 of the Applicants' Affidavit in support. In those paragraphs the 2<sup>nd</sup> applicant states that they discovered that the Directors of the 1<sup>st</sup> Applicant are guarantors of the 1<sup>st</sup> Applicant which wasn't their intention. Upon perusal of Annexure JM1 to the Applicants' Affidavit in support, I can see that both directors of the 1<sup>st</sup> applicant signed on every single page of the Consent Judgment. That means that they also signed on page  
85 2 which has clause 4 and 5 that expressly cite them as guarantors of the 1<sup>st</sup> applicant. During cross examination, the 2<sup>nd</sup> Applicant denied the signatures on the other pages of the Consent Judgment except the one on the third page.

What is important is that the 2<sup>nd</sup> applicant does not dispute the terms of the consent but rather his dispute is on what he understood it to mean. In the case of **L'Estrange versus**  
90 **Gracoub Ltd (1934) 2 KB 394** court held that a party to a contract is bound by their signature consenting to a contract containing an exclusion clause written in regrettably small print. This means that a person is bound by a document which he signs, whether he reads it or not. As such the 2<sup>nd</sup> applicant's claim that they discovered that they were guarantors in a document they signed is a falsehood. As such, I find that paragraph 4, 5

95 and 6 of the Applicants' Affidavit in support contains falsehoods as the Applicants' were not able to prove the same.

The Respondent prayed that this court dismiss the application on that ground to which he cited the case of **Anthony Okello versus Ojok B'LEO & Ors, MA No. 26/2006** where Justice Stephen Musota dismissed the application based on the falsehoods the applicant  
100 had told court in his Affidavits. In that case his lordship relied on the case of **Bitaitana V Kananura (1972) HCB** where court held that where there are false hoods in Affidavits, the entire Affidavit has to be disregarded and application rejected and the case of **Joseph Mulenga V Photo focus (U) Ltd (1996) VI KALR 19** where court held that where an Affidavit in support of an application contained obvious falsehoods, such false hoods  
105 rendered the entire Affidavit suspect and an application based on such an Affidavit must fail.

I have considered the decision of my learned brother and I see no reason to depart from it. The Applicants' Affidavit in support contains falsehoods that are central to the Applicants' case. The Affidavit is accordingly disregarded.

110 This leaves the Notice of Motion without a supporting Affidavit, an Application without a supporting Affidavit is without evidence and cannot therefore stand, it collapses and is accordingly dismissed with costs for the Application awarded to the Respondents.

Delivered at Kampala and signed copies for the parties placed on file this <sup>14<sup>th</sup></sup>.....day of July, 2021.

115 .....

RICHARD WEJULI WABWIRE

JUDGE