

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
[COMMERCIAL DIVISION]
MISCELLANEOUS APPLICATION NO. 1269 OF 2021
ARISING FROM CIVIL SUIT NO. 338 OF 2021
MARTS JP CONSULT-SMC LTD:::APPELLANT
VERSUS
AIRTEL UGANDA LTD:::RESPONDENT
Before Hon. Lady Justice Patricia Kahigi Asimwe

Ruling

1. On 1st October 2021 the Applicant filed this Application under articles 128 (2), (3), (50 (2), 28 (12), 23 (1) (a) of the Constitution, Section 33 of the Judicature Act, Sections 64 (c) and (e) and 98 of the Civil Procedure Act and Order 52 Rules 1 and 3 of the Civil Procedure Rules. The Applicant seeks orders that:
 - i. The Respondent be held responsible for the contempt of a court order dated 11th day of June 2021
 - ii. The Respondent be fined UGX. 500,000,000 as a sanction for her contemptuous conduct.
 - iii. Costs of the application be provided for.

2. The Application was supported by an Affidavit in Support sworn by Patrick John Kateeba, the manager of the Applicant who stated as follows:
 - a) On the 17th day of May 2021, the Applicant instituted Civil Suit No. 338 of 2021 vide Marts JP Consultant-SMC Ltd versus Airtel Uganda Limited.



- b) The Applicant also filed an application for a temporary injunction vide Misc Application No 727 of 2021, Marts JP Consult-SMC Ltd versus Airtel Uganda.
 - c) That the learned trial Registrar granted the temporary injunction and orders were extracted and served on the Respondent's advocates on the 14th of June 2021.
 - d) On the 24th day of September 2021, the Respondent issued the Applicant with a notice of amendment of the agreement whose termination the orders of the court had stayed.
 - e) On the 28th day of September 2021, the Respondent issued another notice restructuring and changing commissions of the Applicant.
 - f) That the Respondent in the issued amendment notice which stipulated that the Applicant will cease to operate all the Airtel money business and that the same should be handed over to them within 14 days from the 28th day of September 2021.
 - g) That the Respondent in contempt of this order also stated in the said notice that they would block all Airtel money agency lines being operated by the Applicant contrary to the Court order.
 - h) That the Respondent is a contemnor and has done everything knowing that there was a subsisting order issued against them but decided to defy and should pay a fine of 500,000,000.
3. The Respondent in response filed an Affidavit in Reply sworn by Hudson Andrew Katumba, the legal and commercial manager of the Respondent who stated as follows:
- a) The Respondent aggrieved by the decision of the Learned Registrar, immediately filed Miscellaneous Appeal No. 007 of 2021 seeking orders that the order of temporary injunction and the ruling of the Learned Registrar be set aside.

- b) That notwithstanding the pendency of the appeal, the Respondent complied with the order of the court and permitted the Applicant to maintain its business with the Respondent, Airtel Uganda Limited.
- c) That the Applicant was still required under Clause 4.9 and Annexure 3 of the Franchise Agreement to comply with the Capitalization requirements communicated by the Respondent for the Assigned Units, which requirement was not fulfilled by the Applicant in further breach of the Franchise Agreement.
- d) The Respondent avers that the Applicant was issued with the Notice of amendment of the Agreement dated 24th August 2021 and a Notice of Re-alignment of Business Operations dated 25th August 2021 in fulfilment of the requirements of Section 48 of the National Payment Systems Act, 2020 and the Bank of Uganda directive.
- e) The Applicant and Respondent are required under Clause 4.14 and Clause 5.5.1 of the Franchise Agreement to comply with any relevant laws and governmental regulations in Uganda. The Notice of Alignment and Notice of Amendment were therefore issued in compliance with The National Payment Systems Act, 2020.
- f) The Temporary Injunction Order does not bar the Respondent from exercising its rights and benefits under the Franchise Agreement which is still in force, save for implementing the Termination Letter dated 10th May 2021.
- g) The Temporary Injunction Order does not discharge the Applicant from fulfilling its obligations under the Franchise Agreement;
- h) The Respondent has not violated the Temporary Injunction Order and is therefore not in contempt of court when they seek to exercise their rights under the Franchise Agreement and to comply with the requirements of the law.