THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(COMMERCIAL DIVISION)

MISCELLANEOUS APPLICATION NO. 1702 OF 2021

(ARISING OUT OF HCCS NO. 635 OF 2019)

RUSHFAR TRADING CO. LTD :: APPLICANT

VERSUS

1. **CHONGQING INTERNATIONAL CONSTRUCTION CORPORATION LTD**
2. **COLAS EAST AFRICA LTD**
3. **BI-ENERGY GENERAL TRADING LLC :: RESPONDENTS**

BEFORE: HON. LADY JUSTICE HARRIET GRACE MAGALA

RULING

Background

The 1st Respondent sued the 2nd Respondent before this honorable court vide **Civil Suit No. 635 of 2019** for recovery of *USD$ 694,731.57 (United States Dollars Six Hundred Ninety-Four Thousand Seven Hundred Thirty-One and Fifty-Seven cents)* arising out of an alleged breach of contract for the supply of Bitumen.

By order of this honorable court, the Applicant was added as a third party on an application by the second respondent. The Applicant sought indemnity from the 3rd Respondent and counterclaimed against the 2nd respondent for *USD $ 100,000 (United States Dollars One Hundred Thousand only)* for the supply of goods and special damages of *USD 78,680 (United Dollars Seventy-Eight Thousand Six Hundred Eighty only)*.

On the 7th day of July 2021, the parties entered a comprise to settle the dispute and executed a Consent Judgment; which was sealed by this honorable court on the 13th day of July 2021. It is this Consent Judgment that the Applicant seek to vary and or set aside.

The Application

The Applicant filed this matter in court seeking for orders that this honorable court discharges her for having satisfied her obligation to the first respondent under paragraph 2 of the Consent Judgment and that paragraphs 2, 3, and 4 of the Consent Judgment dated 7th July 2021 executed by the parties in HCCS NO. 635 of 2019 be reviewed and set aside on grounds of mistake, misapprehension and misrepresentation of facts as presented by the 1st Respondent

and for sufficient cause having been proved by the Applicant and the counterclaim of the applicant be heard interparty and determined by this honorable court, and costs of the application be provided for.

The grounds upon which the Application is premised are that:

a) The Applicant's consent to the terms of the consent judgment was procured by fraudulent intent, misrepresentation and misapprehension of facts by the 1st Respondent
b) The 1st Respondent has frustrated the performance of the Applicant's obligations to her under the consent
c) The Applicant is not guilty of dilatory conduct and
d) It is in the interest of justice that this Application be granted.

Representation

The Applicant was represented by M/s Kirunda & Wasige Advocates while the 1st Respondent was represented by M/s Milton Advocates. The 2nd and 3rd Respondents were never represented.

The 1st Respondent deposed an affidavit in reply opposing the Application, the Applicant made a rejoinder but the 2nd and 3rd Respondents never made a reply to this Application despite being served. Thus, they shut themselves out of these proceedings.

Both the Applicant and the 1st Respondent, on directions of this honorable court filed their written submissions respectively through their advocates. This honorable court has had the benefit of appreciating the said submissions and has decided this matter after taking into consideration the pleadings and submissions of both parties.

Issues

a) *Whether the applicant should be discharged from her obligations under clause 2 of the Consent Judgment?*
b) *Whether the Application discloses grounds for setting aside the consent judgment dated 7th July 2021?*
c) *Whether the Applicant is entitled to the remedies sought?*

Determination

a) *Whether the Applicant should be discharged from her obligations under clause 2 of the Consent Judgment?*

It was submitted for the Applicant that she should be discharged from her obligations under clause two of the consent judgment on the basis that clause 2 and 4 of the consent judgment were mutually inclusive in that one could not be performed without the other and that the 1st

Respondent introduced new pre conditions to clause 4 of the consent judgment that were never agreed upon on prior to execution of the consent judgment and thus this made the performance of the contract on part of the applicant impossible.

Counsel relied on **Sections 35, 45 and 66 of the Contracts Act 2010** to explain the averments in the affidavit of Mr. Robert Kirunda, the advocate of the Applicant during the transaction, that the Bitumen was to be sold and the sale price would be split equally between the Applicant and the 1st Respondent, the buyer agreed with the 1st Respondent and offered *UGX 400,000,000/-* which would reduce the consent amount to *USD$ 57,000* as opposed *to USD $ 67,*000, and the wording of clause two of the consent judgment was to facilitate expeditious signing of the consent but would be revised to indicate *USD 57,000* and it was on this basis that the Applicant signed the consent judgment.

The learned counsel for the Applicant relied on ***Oloka Onyango and 9 others Versus AG Constitutional Petition No. 8 of 2014*** to assert that the 1st respondent made no response to the affidavit of Mr. Robert Kirunda and thus the averments are presumed to have been admitted.

Further submission was made that the Applicant made efforts to perform the contract but was frustrated by the 1st respondent, and protested through her lawyers over the conduct of breach of the consent but no response was given by the 1st respondent but rather applied for execution of the consent judgment.

That the Applicant discovered when its representatives went for inspection that at least 700 drums of Bitumen out of 3,200 drums were missing which fact was never disclosed to the Applicant and further the parties were aware of the rapidly diminishing market value of the Bitumen and yet the 1st respondent delayed the release of the same.

Therefore, the Applicant concluded that the 1st respondent breached the consent by refusing to release the bitumen to the applicant, introducing new conditions to the release of the bitumen which entitles the applicant to be discharged of the obligations of the contract.

For the 1st Respondent, it was submitted that the 1st respondent never frustrated the Applicant's obligations under the Consent Judgment but rather complied with clause 4 of the consent judgment by releasing the bitumen to the applicant through a letter dated 8th July 2021, giving the Applicant full access to the bitumen.

The learned counsel for the 1st respondent further submitted that the assertion by Mr. Kirunda Robert under paragraph 3(d) of his affidavit, that the figure of USD $67,000 under clause 2 of the consent agreement was always pegged to a sale of the bitumen would be subject to reduction in the event that the market price fell from what was assumed by the parties was a baseless claim and an afterthought since the applicant had supplied the poor quality bitumen and that is why the applicant was added to indemnify the 2nd respondent as under paragraph 19 of the 1st respondent's affidavit. That the applicant, having supplied the poor quality bitumen, she could not expect it to be better mercantile quality.

It was therefore counsel's submission that the applicant was trying to set aside the consent judgment which they expressly consented to and has benefited from by selling 50% of the bitumen, received USD $100,000 from the 2nd respondent and that she was abusing court process. That the sole purpose of this application is to frustrate the execution proceedings commenced by the 1st respondent.

In rejoinder, it was submitted by the Applicant that the issue of the quality of the bitumen was not resolved under the consent judgment but was to be resolved in the counter claim and it is incorrect to allege that the quality was poor.

That the 1st respondent never responded to letters dated 21st July 2021, October 12th 2021 and the letters from the 1st respondent dated 18th November 2021 and 26th November 2021 were silent on notifications made by the applicant.

Counsel retaliated the position on non-rebuttal of facts in an affidavit of Mr. Kirunda to submit that the applicant has conclusively proved the representations that were made to induce her to sign the consent.

This court has noted that under the notice of motion of this application, it is stated and prayed that the applicant be discharged of her duties under the consent judgment but the affidavit in support states discharge by frustration.

Discharge of a contract by performance and discharge of a contract by frustration are quite two different terms and aspects under the law of contract. Nonetheless, this court shall proceed to resolve the dispute between the parties.

The parties on the 7th day of July 2021, entered a consent judgment in Civil Suit No. 635 of 2019. After headings and the parties, the Consent Judgment/Decree reads;

"CONSENT JUDGMENT/DECREE

BY CONSENT of the Plaintiff, the defendant and the Third Party and with the approval of this Honorable court, IT IS HEREBY AGREED as follows;

1. *The Defendant shall immediately upon execution hereof transfer the sum of USD $233,000 (United States Dollars Two Hundred Thirty-Three Thousand only) to the Plaintiff's bank account details which shall be provided to the Defendant. The Defendant shall within two days or such earlier time from the date of execution hereof provide proof of remittance of the sum herein to the Plaintiff.*
2. *The Third party shall within a period of three (3) months from the execution hereof pay the sum of USD 67,000 (United States Dollars Sixty-Seven Thousand only) to the Plaintiff as a top up to raise the USD$ 300,000 (United States Dollars Three Hundred Thousand only).*
3. *The Defendant shall immediately upon execution hereof transfer the sum of USD $100,000 (United States Dollar One Hundred Thousand only) to the Third Party's bank*

account whose details shall be provided to the Defendant. The defendant shall within two days or such earlier time from the date of execution hereof provide proof of remittance of the sum herein to the Third party. This shall be in full and final settlement of the Counterclaim between the Plaintiff., the defendant and the Third Party.

4. *The Plaintiff shall upon execution of this Consent Judgment handover the Bitumen to the Third Party as is.*
5. *In the event of default on any of the terms of this Consent, any offended party shall be at liberty to commence execution proceedings to compel compliance herewith.*
6. *The execution of this agreement gives full and final resolution to all claims and disputes between the Parties and shall not be taken as an acceptance of liability by and of the parties.*
7. *Each party shall bear its own costs.*

Dated at Kampala this 7th day of July 2021."

----------The three parties and their advocates affixed their signatures and the affixed its hand and seal--------

The Applicant contests that the performance of her obligations under the consent decree was frustrated by the 1st respondent from performing its obligations under the consent judgment/decree and thus should be discharged.

Section 66 of the **Contracts Act 2010** states that:

> *"Where a contract becomes impossible to perform or is frustrated and where a party cannot show that the other party assumed the risk of impossibility, the parties to the contract shall be discharged from the further performance of the contract."*

It is alleged by the applicant that the 1st respondent breached the consent judgment by not fulfilling her obligations under clause four of the Consent Judgment and thus made it impossible for her to perform the obligations under clause 2 of the consent judgment.

In the case of ***Cargo World Logistics Ltd versus Royale Group Africa Ltd HCCS No. 157 of 2013***, the court approved the definition of breach of contract as defined in **Ronald *Kasibante v Shell (U) Ltd HCCS No. 542 of 2006 (2008) HCB 162,*** as:

> *"breach of a contract is the breaking of the obligation which a contract imposes, which confers a right of action for damages on the injured party. It entitles him to treat the contract as discharged if the other party renounces the contract or makes its performance impossible or substantially fails to perform his promise. The victim is left with suing for damages, treating the contract as discharged or seeking a discretionary remedy".*

It is trite law that a consent judgment once signed by parties and sealed by the court it becomes as a new contract which supersedes the original cause of action. ***See. Hirani V Kassam (1952-53) EA 131.***

I note that the Applicant advanced the argument through Mr. Kirunda under paragraphs 4 of his affidavit in support of the Notice of motion that the figure under *Clause 2* of the consent judgment would be revised and would fall. Further, Mr. Christopher Kibuuka Mugote under his affidavit in support as well in paragraph 12 and 13 stated that performance of *Clause 2* was pegged on the sale of bitumen. The Applicant's lawyers equally emphasized this argument. However, the law on parole evidence has evolved that, once parties have reduced a contract into writing, any extrinsic evidence meant to vary, contradict, alter or add to the terms of the agreement, is generally inadmissible. ***See. Future Stars Investments (U) Ltd versus Nusuru Yusuf HCCS No. 0012 of 2017***; ***Oscar Chess Versus Williams [1957] 1 ALL ER 325***

The rationale is to maintain the sanctity of the contracts entered into freely by the parties. It is a bid by the courts to honor the terms of contracts by the parties and, freedom of contract, bearing in mind that courts do not construct contracts for parties but rather assist the parties in interpretation of these contracts.
Clauses 2 and 4 of the Consent Judgment are plain and clear. None stipulates to be intertwined with the other. Had the parties intended so, they should or could have reduced this into writing and incorporated the terms suggested by the applicant, under the said clauses of the Consent Judgement respectively.
Therefore, the two clauses are quite distinct and thus ought to have been honored by the party on whom the obligations lay.

Did the 1st respondent frustrate the performance of the applicant's obligations under the consent judgment? I have already found that the performance of the applicant's obligations was not premised on the release of the bitumen. Clauses 2 and 4 of the consent judgment were distinctively independent.
It was argued for applicant that the respondent frustrated efforts by the applicant to retrieve the bitumen. Counsel for the applicant relied on **Section 45 of the Contracts Act 2010** that where a contract contains reciprocal promises and one party to the contract prevents the other from performing his or her promise, the contract shall become voidable at the option of the party who is prevented from performing his or her promise. However, the current contract does not contain any reciprocal clauses.
Mr. Mugote explained in his affidavit in support under paragraph 20 of his affidavit in support that he proceeded to Gulu to take possession of the Bitumen, together with a buyer on 15th July 2021 but was prevented from taking the bitumen on the basis that the 2nd respondent had not honored his part of the bargain under clause 1 of the consent judgment. That further, they established that 700 drums of bitumen were missing and the remaining drums were in poor state as shown in Annexure *H-1*. It was Mr. Mugote's evidence that on 16th July he took another potential buyer to the site but still was declined possession of the bitumen and this he informed the applicant's lawyers who communicated to the 1st respondent under *Annexture "I" and "J"* of the affidavit in support.
On the contrary, Mr. Duan Yangchun, a director in the 1st respondent company in his affidavit in opposition of the notice of motion under paragraphs 4, 5 and 6 deposed that the applicant had unrestricted access to the bitumen. He attached *Annextures 'B' and 'C'* to confirm this.

According to *Annexture 'B'* of the affidavit in opposition of the notice of motion, the 1st respondent through her lawyers unreservedly handed over the Bitumen stored at the campsite and quarry site in Gulu District. *Annexture 'C'* indicates bitumen taken by the applicant from 24th July 2021 to 2nd September 2021. This was never contested or explained by the applicant. Further, *Annexture 'K'* to the affidavit in support further authorizes the applicant to remove the bitumen from the two sites but no reason is provided by the applicant for not doing the same.
Mr. Mugote for the applicant states that he was denied access to the bitumen but *Annexture 'G'* to his affidavit indicates that he indeed had access to the bitumen and spent a day at the site inspecting the bitumen with the potential buyers. As can be seen from *Annexture 'G'*, disagreement only arose when the applicant attempted to introduce new terms and conditions to the performance of the consent judgment.
This court therefore finds that the 1st respondent did not frustrate the applicant thereby failing to honor her obligations under the consent judgement.
The 1st Respondent did not breach of the terms of the consent judgment/decree.
Hence the applicant cannot be discharged of her obligations under the Consent Judgment.
In the premises, issue one is answered in negative.

b) *Whether the Application discloses grounds for setting aside the consent judgment dated 7th July 2021?*

The Applicant's counsel while relying on the ***Attorney General and another Versus James Kamoga and others SCCA No. 8 of 2004*** submitted that this court should set aside the consent judgment executed on the 7th day of July 2021 on grounds of mistake, misapprehension of facts and misrepresentation by the 1st respondent and sufficient cause.
It was counsel for the applicant's submission that the conduct of the parties prior to the execution of the consent was relevant in determining whether or not factors that vitiate the consent exist. Reliance was made on the case of ***Krone Uganda Ltd Versus Kerilee Investments Ltd HCMA No. 306 of 2019***.
Further, that the court ought to look at the fact that the agreement to pay USD $ 67,000 was premised on the sale of the bitumen that was in the custody of the 1st respondent, the bitumen was at the same place, same amount and in same condition it was when last accessed by the applicant. The figure of USD $67,000 was always pegged on the sale of bitumen and would be subject to reduction in the event that the market price fell down, the 1st respondent agreed to release the bitumen to the applicant on the date of execution of the consent judgment to facilitate the sale of the bitumen, there existed a specific buyer and that if the bitumen fetched a lower price, the 1st respondent would revise the sum payable by the applicant to 50% of the price offered by the buyer at prevailing dollar rate.

For the 1st respondent it was submitted that a consent judgment forms a contract and the court may interfere with a consent judgment/decree only if the consent judgment was procured through fraud, mistake, or collusion, misapprehension or an agreement against public policy. Reference was made to the case of ***Attorney General and another Versus James Kamoga and others (supra)***.

While defining fraud citing and relying on the case of ***Fredrick Zaabwe versus Orient Bank and others SCCA No. 4 of 2006***, learned counsel for the 1st respondent submitted that the 1st respondent never played any part in how the Applicant would proceed to do its trade in selling bitumen but only released the bitumen to the applicant as under terms of the consent judgment. Further that clause 2 of the consent judgment stipulated that payment of USD $67,000 would be paid within three months from the date of execution of consent judgment and had no condition of payment upon sale of bitumen.
That the consent judgment was put in writing to avoid allegations of fraud or ignorance of facts and fully signed by the applicant and her lawyers. Hence the applicant is estopped from asserting a position not agreed in the consent judgment. Learned counsel relied on ***Oyugi Martin versus Oyoo Anthony Civil Appeal No. 0019 of 2012*** and ***Kakooza Yasin V Kaweesa Nicholas Misc. Application No. 888 of 2021***
Additionally, it was submitted that the applicant signed the consent judgment together with its lawyers and the applicant's representatives and after sale of the nearly 50% of the available bitumen. The assertion that the consent was obtained through mistake, misrepresentation and misapprehension is an afterthought. Hence this application is an abuse of court process.

A consent judgment has been defined as a judgment of the court on the terms entered into by the parties to the litigation validated by Court under **Order 50 rule 2 and Order 25 rule 6 of the Civil Procedure Rules**, and once a consent judgment has been recorded or endorsed by the court, it becomes the judgment of the court and binding upon the parties. ***See. Friedhelm Erwin Jost and another Versus Roko Construction Ltd and 2 others HCMA No. 0089 of 2021***.
In the case of ***Hirani Versus Kassam (supra),*** it was observed that, the decree is passed upon the new contract between the parties which supersedes the original cause of action.
The case of ***Attorney General and another Versus James Kamoga (supra)*** explained the position on review or setting aside consent orders. *The principle upon which the court may interfere with a consent judgment was outlined by the Court of Appeal for East Africa in* ***Hirani vs. Kassam*** *(supra) in which it approved and adopted the following passage from* ***Seton on Judgments and Orders,*** *7th Ed., Vol. 1 p. 124:*

> *"Prima facie, any order made in the presence and with consent of counsel is binding on all parties to the proceedings or action, and cannot be varied or discharged unless obtained by fraud or collusion, or by an agreement contrary to the policy of the court … or if the consent was given without sufficient material facts, or in misapprehension or in ignorance of material facts, or in general for a reason which would enable a court to set aside an agreement."*

Therefore, in absence of these vitiating factors, the consent judgment must be upheld by this honorable court.
In ***Basima Kabonesa Versus AG and another SCCA NO. of 2021,*** Hon. Percy Night Tuhaise at pages 31 and 32 observed that;

> *"a consent judgment, by its very nature is not based on any party's fault or blameworthiness, such that it is even possible for a party to the suit to compromise his or her position in the interests of putting an end to the dispute or settling the matter amicably. It is in that respect that I would take it that the faults in the pleadings or*

weakness of a case should not be relied on to deprive a party of his/her claims covered by a consent judgment.
Thus, since consent judgments are an enforceable reflection of the parties' agreements to settle a dispute with the aim of ending litigation, short of the existence of vitiating factors like fraud, collusion, mistake, or contravention of court policy, such parties must uphold the consent judgment extracted from their settlement or agreement." (emphasis is mine)

The Applicant stated through Mr. Mugote under paragraph 13 of the affidavit in support that if the sum in clause 2 had not been pegged to the sale of the bitumen, he would not have signed the consent judgment and further under paragraph 17 of the affidavit in support that the applicant was under economic duress to recover the cost of the bitumen whose market value was deteriorating.

Misrepresentation of material facts was well explained by **Hon. Mubiru J**, in ***Friedhelm Erwin Jost and another Versus Roko Construction Ltd and 2 others (supra)*** that much as parties entering a contract will accept and recognize the risk of errors and omissions in preceding negotiations to a contract, whether negligent errors or omissions, each party will assume honesty and good faith of the other.
The misrepresentation however, has to be a false statement which shall induce the other party enter into the contract. In other words, the party alleging misrepresentation ought not have signed the contract had the facts been represented differently.

It is claimed by the applicant that the 1st respondent concealed the fact that the bitumen has reduced in quality and in number and about 700 drums of the bitumen could not be accounted for.
Further, the Applicant alleged mistake as to the status/quality of the bitumen at the time of execution of the consent judgment.
In ***Friedhelm Erwin Jost and another Versus Roko Construction Ltd (supra)***, **Hon. Stephen Mubiru** had this to say at page 8 of his ruling;

*"The principles which apply when an order for setting aside a consent judgment is sought on the ground of mistake were summarised in **J v. B [2016] 1 WLR 3319**, as follows; (i) the court may set aside a consent judgment on the ground that the true facts on which it based its disposition were not known by either the parties or the court at the time the order was made; (ii) the applicant must show that the true facts would have led the court to have made a materially different order from the one it in fact made; (iii) the absence of the true facts must not have been the fault of the applicant; (iv) the applicant must show, on the balance of probabilities, that he or she could not with due diligence have established the true facts at the time the consent judgment was made; (v) the application to set aside should be made reasonably promptly in the circumstances of the case; (vi) the applicant must show that he or she cannot obtain alternative mainstream relief which has the effect of broadly remedying the injustice caused by the absence of the true facts; and (vii) the application, if granted, should not prejudice third parties who have, in good faith and for valuable consideration, acquired interests in property which is the subject matter of the relevant order."* (emphasis is mine)

Clause of 4 of the Consent Judgment states that the Bitumen shall upon the execution of the Consent Judgment be handed over to the Third Party, now Applicant '**as is.'** This express term in essence meant that the bitumen would be released as it appeared on the date of the execution of the consent judgment i.e. in terms of its quantity and quality.
The Applicant signed this consent judgment through her representatives and her advocates which was done after thorough negotiations and discussions between the parties and their advocates with the assistance of this honorable court.
In the case of ***Attorney General Versus Good Man Agencies Ltd SCCA No. 05 Of 2010***, the Supreme Court agreed with the Constitutional Court that the parties had taken considerable time, care and effort in framing the clauses of the consent agreement. But the Court found that *Constitutional Court* was wrong in reviewing the interest under the consent order which was agreed upon by the parties.
In the instant facts, Annexture 'B' indicates that a WhatsApp group was formed for communication and settlement of the matter. From the 23rd of June 2021, the parties' advocates engaged in the drafting of the terms of the consent judgment. Draft samples of the consent judgement were shared and the advocates shared ideas after consultation with their clients on the framing of clauses within the consent judgment till when the consent judgment was executed.
The consent judgment was therefore executed on the terms duly suggested and contemplated upon by the parties. There is no cogent evidence on record that the applicant was concealed of any information by the 1st respondent. Had the applicant conducted due diligence, she should have established the status of the bitumen before executing the consent judgment; much as the status of the bitumen was not a term in the consent judgment.
It was submitted that the applicant executed the consent order under economic duress to sell off the bitumen that was deteriorating in value. However, this assertion is not tenable in my opinion because, the obligation of the applicant to sell the bitumen arose from the execution of the consent judgment. At all material times, the bitumen was in the custody of the 1st respondent, to whom it had been supplied by the second respondent for the construction of the roads. The bitumen was never property of the applicant until when the consent decree was passed. Given that the consent judgment did not state that the USD $67,000 was to be derived from the sale of bitumen, this court finds no evidence that the applicant was under any duress.

Further, under paragraph 29 of the affidavit in opposition of the notice of motion, the 1st respondent's director contests that the 2nd respondent had already honored the terms of the consent agreement.
The fact that the 2nd respondent had already honored its part of the bargain under the consent judgment was never contested by the applicant. This includes payment of USD $100,000 to the applicant.
In my opinion, if the applicant has already received the USD $100,000 under clause 3 of the consent judgment, by instituting this application, the applicant is probating and reprobating.
In the case of ***Energo (U) Co. Ltd Versus Geoffrey Rubaramira and AG CACA No. 0183 of 2013***, it was observed that the doctrine of approbation and reprobation reflects the principle whereby

a person cannot both approve and reject an instrument most commonly described as blowing hot and cold wind.
Having benefited from the consent agreement, the applicant cannot apply to have it set aside. More so when the other parties have honored their obligations. To set the consent aside would re-open the case that had been amicably settled, at the expense of other parties that complied with the terms of the contract would be allowing the applicant to *'eat her cake and have it'* which would occasion injustice to other parties.

I am persuaded by the principles laid down in ***J V B (2016) 1 WLR 3319*** that the applicant has other mainstream forums for acquiring remedy over the consent judgment. For example, clause 5 of the consent order expressly states that an offended party shall be at liberty to commence execution proceedings to compel compliance.

In the circumstances, this application raises no ground for setting aside consent judgment entered before this honorable court on the 7th day of July 2021.

c) Whether the Applicant is entitled to the remedies sought?

The Applicant submitted that this court has powers under Section 33 of the Judicature Act to review the consent judgment and under Section 98 of the Civil Procedure Act to make orders necessary for the ends of justice or prevent abuse of court process and thus prayed that this court finds that:

1. The 1st respondent breached the consent by refusing to release the bitumen to the applicant's representative as agreed and introduced new conditions precedent to release of the bitumen which conditions were never discussed and which had the effect of frustrating performance on part of the applicant and thus be discharged of her duties under the consent judgment.

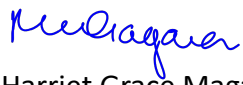
This court has found under issues one that the 1st respondent did not breach the terms of the consent judgment. The order is thus denied.

2. The consent judgment vide HCCS No. 635 of 2019 be set aside for having been entered into through mistake, misapprehension of facts by the applicant and counter claim of the applicant be heard interparty.

From the finding of this honorable court, that there is no sufficient evidence on record that there was mistake, misapprehension of facts by the applicant and misrepresentation of the facts by the 1st respondent, this court is constrained from reviewing or setting aside the consent decree.

This application is dismissed with costs to the 1st Respondent.

Dated at Kampala and delivered electronically on ECCMIS this 17th day of October 2023



Harriet Grace Magala

Judge