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

**MISCELLANEOUS APPLICATION No. 1481 OF 2021**

**(ARISING FROM MISCELLANEOUS APPEAL No. 007 OF 2021)**

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**(ARISING FROM MISCELLANEOUS APPLICATION No. 727 OF 2021)**

**(ARISING FROM CIVIL SUIT No. 338 OF 2021)**

**MARTS JP CONSULT – SMC LTD ..... APPLICANT**

**VERSUS**

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**AIRTEL UGANDA LIMITED ..... RESPONDENT**

**BEFORE: HON. LADY JUSTICE SUSAN ABINYO**

**RULING**

Introduction

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This application was brought by Notice of Motion under Order 44 Rules 2, 3, and 4, and Order 52 Rule 1 of the Civil Procedure Rules SI 71-1, and section 98 of the Civil Procedure Act, Cap 71, where the Applicant seeks for orders that:

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1. The Applicant be granted leave to appeal against the ruling, and orders of the Learned Judge in Miscellaneous Appeal No. 007 of 2021.
2. Stay of the hearing, and or proceeding in Miscellaneous Appeal No. 007 of 2021.
3. Costs of this application be provided for.

Facts

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This Application is supported by the affidavit of Mr. Patrick John Kateeba the Applicant's Manager, in which the grounds are deposed in paragraphs 1-30, but briefly that;

- 5 I. The Applicant instituted Civil Suit No. 338 of 2021 against the Respondent, and the same was allocated to Hon. Justice Richard Wejuli. That after filing the said suit, the Applicant filed two applications to wit Miscellaneous Application No. 727, and 728 of 2021, for a temporary, and interim injunction respectively.
- 10 II. Upon hearing the said applications by His Worship Kisawuzi Erias as the trial Registrar, an order was issued in Miscellaneous Application No.727 of 2021 for a temporary injunction. The Respondent was served with the said order on 14<sup>th</sup> June, 2021, and they filed an appeal arising from the said order, which was forum shopped to Her Lordship Susan Abinyo.
- 15 III. The Respondent abused the orders issued by the Learned Registrar, and the Applicant filed an application for contempt of Court vide Miscellaneous Application No. 1269 of 2021. That the said application was allocated to His Lordship Richard Wejuli since he was the trial Judge in Civil Suit No. 338 of 2021.
- 20 IV. The Advocates for the Applicant raised a preliminary objection before Her Lordship Susan Abinyo in respect of the administrative error, and anomalies in the allocation of the appeal pending the hearing of an application for contempt of Court adjourned before the trial Judge but was dismissed on the grounds that it was proper for her to hear the appeal, and the trial
- 25 Judge hears the main suit, and the application for contempt. The Learned Judge is faulted, and the Applicant intends to appeal against the same.
- V. This application has been brought without delay, and that it is the interest of justice that the application is allowed.

The Respondent opposed this application in an affidavit deposed in paragraphs  
30 1- 18 by Mr. Hudson Andrew Katumba the Legal, and Commercial Manager of the Respondent, and summarised as hereunder:

That he has been advised by his Lawyers M/S Verma Jivram & Associates which advice, he believes to be true that:

- 35 i. This application is misconceived, frivolous, vexatious, and an abuse of Court process.
- ii. The allegations of forum shopping are unfounded, baseless, and false since Miscellaneous Appeal No. 007 of 2021 was allocated and fixed for hearing by the Registrar of the Commercial Court and not the Respondent.

- 5      iii. On 26<sup>th</sup> October, 2021, Hon. Justice Wejuli Wabwire stayed Miscellaneous Application No. 1269 of 2021 because it had been filed on 1<sup>st</sup> October, 2021, long after Miscellaneous Appeal No. 007 of 2021, which was filed on 15<sup>th</sup> June, 2021.
- 10      iv. The Applicant is not in any way prejudiced by the ruling of the Court since the Learned Hon. Justice Susan Abinyo has the inherent powers and jurisdiction to hear, and determine Miscellaneous Appeal No. 007 of 2021.
- 15      v. The grounds stated by the Applicant are not sufficient to warrant the orders for leave to appeal and stay of proceedings as alleged.
- 15      vi. The correct procedure where a person is aggrieved with administrative decisions of the Court, is to make a written complaint backed by evidence to the Head of the Court.

20      The Applicant filed an affidavit in rejoinder, deposed in paragraphs 1- 10, in which he reiterated the averments in the affidavit in support of this application, except that there was no need to lodge a complaint with the Head of the Court, since the trial Judge in Miscellaneous Application No. 007 of 2021 had made a decision on the objection.

#### Representation

25      The Applicant was represented by Counsel Ogomba Issa of M/S Praxlex Advocates while the Respondent was represented by Counsel Deepa Verma jointly with Counsel Dyabagambaki Raymond of M/S Verma, Jivram & Associates.

#### Issues for determination

Counsel for Applicant did not frame issues for determination by this Court. In accordance with the provision of Order 15 Rule 3 of the Civil Procedure Rules SI 71-1, this Court framed the issues as below:

- 30      1. Whether this application discloses grounds for leave to appeal?  
2. What remedies are available?

#### Decision

I have considered the evidence adduced by the parties, and the submissions of Counsel for the parties herein, to find as follows: -

35      Order 44 Rule 1(2) of the Civil Procedure Rules SI 71-1 provides that;

5 “An appeal under these Rules shall not lie from any other order except with leave of the court making the order or of the court to which an appeal would lie if leave were given.”

It is settled law that in an application for leave to appeal, the Applicant should prove that there are grounds of appeal which merit serious judicial consideration, and where the appeal is from an order which is discretionary, a stronger case has to be made out. (See the case of **Sango Bay Estates Ltd and Others Vs Dresdner Bank A G [1971] 1 EA 17 pg. 20**)

15 I am further persuaded by the decision in **Kengazi Angella Vs Metl(U) Ltd, HCMA No. 723 of 2015** (Arising from HCCS No. 723 of 2014), relied upon by Counsel for the Respondent, which cited with approval the case of **Degeya Trading Stores (U) Ltd Vs URA CACA No. 16 of 1996**, where the Court noted that an Applicant seeking leave to appeal must show either that the intended appeal has reasonable chance of success or that he has arguable grounds of appeal and has not been guilty of dilatory conduct.

20 In the instant case, the Applicant stated the intended grounds of appeal under paragraph 15(i - p) of the affidavit in support of this application.

It's well established that the requirement for leave to appeal is intended as a check to unnecessary or frivolous appeals. (See the case of **Kilama Tonny & Anor Vs Mrs. Grace Perpetua Otim HC Civil Appeal No. 031 of 2019**), cited by Counsel for the Applicant.

30 In the case of **Modern Developments Uganda Ltd & Anor Vs FBW Uganda Ltd HCMA No. 434 of 2014** (Arising from HCCS No.481 of 2012), cited by Counsel for the Respondent, the Learned Judge observed that in decided cases, appeals arising from interlocutory decisions could be made part of the appeal at the conclusion of the main suit and that it is therefore not necessary to appeal against an interlocutory ruling separate from the final decision. And that to hold otherwise may lead to a multiplicity of appeals upon incidental orders made in the course of the hearing, when such matters can be more conveniently considered on appeal from the final decision.

35 Taking into further consideration the persuasive decision in **Kilama Tonny & Anor Vs Mrs. Grace Perpetua Otim** (supra), where the Court further held that leave to appeal should not be refused simply because the trial Magistrate or the Appellate

5 Judge is of the opinion that the decision is correct. If the question is one of principle and a novel one, ordinarily leave to appeal should be granted... However, if the question raised be one in respect of which there is no authoritative decision that would be a guide to the parties, then the circumstances favour granting of leave. It is for that reason that leave is hereby granted by ratification.

10 I have considered the persuasive decisions in **Modern Developments Uganda Ltd & Anor Vs FBW Uganda Ltd HCMA**, and **Kilama Tonny & Anor Vs Mrs. Grace Perpetua Otim**(supra); it is my considered view that the question raised should be one that is novel in principle, and with a substantial effect on the subject matter from which the objection is raised. An objection that is raised from a decision  
15 made in the exercise of judicial discretion, as it is in the instant matter, may not usually have a substantial effect on the subject matter before the Court.

It is therefore, my understanding that an application for leave to appeal against a decision which has no significant bearing on the subject matter before Court, may only cause further delay in the disposal of the main suit or appeal.

20 I have taken into account the intended grounds of appeal, and the circumstances of this case as above, to find that the Applicant has not made out a stronger case to warrant serious judicial consideration by the Appellate Court.

For reasons above, I find that this application is frivolous.

This issue is therefore answered in the negative.

25 Issue No.2: What remedies are available?

This Court having found issue (1) above in the negative, further finds that the remedies sought by the Applicant are not available.

In the result, I find that Miscellaneous Appeal No. 007 of 2021, will not be rendered nugatory, and as such, the Applicant is denied the remedy of stay of proceedings  
30 in the said appeal.

Consequently, this application is dismissed with costs in the cause. The appeal shall be fixed for further hearing.

Dated, signed and delivered electronically, this 11<sup>th</sup> day of January, 2023.



SUSAN ABINYO

**JUDGE**

**11/01/2023**