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THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
[COMMERCIAL DIVISION]
MISCELLANEOUS APPLICATION No. 429 OF 2022
(ARISING FROM CIVIL SUIT No. 76 OF 2022)

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RUKUNDO INTERNATIONAL APPLICANT

VERSUS

MUSHAK CONSULT & CONSTRUCTION LIMITED RESPONDENT

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BEFORE: HON. LADY JUSTICE SUSAN ABINYO

RULING

Introduction

20 This application was brought by Chamber Summons under the provisions of section 33 of the Judicature Act Cap. 13, section 18, and section 98 of the Civil Procedure Act, Cap 71 and Order 11 Rules 1 & 2 of the Civil Procedure Rules SI 71-1, seeking the following orders that:

- 25 1. Civil Suit No. 58 of 2021 in the Magistrate's Court of Kabale at Kabale be withdrawn from the said Court and be consolidated with H.C.C.S No 76 of 2022, in the High Court of Uganda at Kampala Commercial Division for purposes of hearing.
- 30 2. In the alternative, the proceedings in Civil Suit No. 58 of 2021 in the Chief Magistrates Court of Kabale at Kabale be stayed pending hearing, and final determination of H.C.C.S No 76 of 2022 in the High Court of Uganda at Kampala Commercial Division.
3. Costs of this application be provided for.

Background

The application is supported by the affidavit of Oscar Mwesigwa a Director of the Applicant organization, deponed in paragraphs 1-13, in which the grounds are summarized as follows:

- 5 I. That the Respondent on the 22nd day of October 2021 filed Civil Suit No. 58 of 2021 in the Chief Magistrates Court of Kabale at Kabale against the Applicant, and that the said suit is pending before the Chief Magistrates Court of Kabale at Kabale and its fixed for hearing on 22nd March 2022 at 09:00am.
- 10 II. That the Applicant upon being served, filed its written statement of defence in civil suit No. 58 of 2021 but never filed a counterclaim since the value of their claim was way above the jurisdiction of the Magistrates Court, and that the Applicant then filed H.C.C.S No. 76 of 2022 in the High Court of Uganda at Kampala Commercial Division.
- 15 III. That the Respondent filed a written statement of defence in H.C.C.S No. 76 of 2022 in the High Court of Uganda at Kampala Commercial Division together with a counter claim, in which the facts and issues are substantially the same in Civil Suit No. 58 of 2021 in the Chief Magistrates Court of Kabale at Kabale as seen in the copy of the written statement of defence, and counter claim herein, attached and marked Annexure "A4".
- 20 IV. That there are similar questions of law and fact that are involved in H.C.C.S No. 76 of 2022 in the High Court of Uganda at Kampala Commercial Division and Civil Suit No. 58 of 2021 in the Chief Magistrates Court of Kabale at Kabale. and that the withdrawal of Civil Suit No. 58 of 2021 in the Chief
- 25 Magistrates Court of Kabale at Kabale and its consolidation with H.C.C.S No. 76 of 2022, in the High Court of Uganda at Kampala Commercial Division will avoid multiplicity of suits.
- V. That it is in the interest of justice that this application be allowed.

The Respondent opposed the application in an affidavit in reply deposed in paragraphs 1-14, by Mugarura Shadrack the Managing Director of the Respondent but briefly that:

- I. The two suits are substantially different as they are based on different contracts though on the same subject matter.
- II. In the Respondent's case, the claim is based on breach of only one contract whereas the Applicant's claim is based on breach of series of contracts though over the same subject matter.
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Representation

Counsel Mpiima Jamir of M/S Kiwanuka & Mpiima Advocates appeared for the Applicant while Counsel Paul Mukasa of M/S Muwada & Co. Advocates appeared for the Respondent.

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5 Issues for determination

1. Whether the Applicant has established sufficient grounds for consolidation of the suits?
2. What remedies are available?

Decision

10 I have considered the evidence of the parties in their respective affidavits, and the submissions of Counsel to find as below:

1. Issue No. 1: Whether the Applicant has established sufficient grounds for consolidation of the suits?

15 It's trite law that once a matter has similar set of facts in which, a cause of action and, or questions of law arises between the same parties, who are seeking the same reliefs, the court ought to grant the application for consolidation of suits. **(See *Stumberg and Another VS Potgieter (1970) E.A 323 at 326*)**

Section 17 of the Civil Procedure Act, Cap 71 provides that:

“17. Power to transfer suits which may be instituted in more than one court.

20 Where a suit may be instituted in any one of two or more magistrates courts and is instituted in one of those courts, any defendant after notice to the other parties, or the court of its own motion, may, at the earliest possible opportunity, apply to the High Court to have the suit transferred to another court; and the High Court after considering the objections, if any, shall determine in which of the several
25 courts having jurisdiction the suit shall proceed.”

Section 18 of the Civil Procedure Act, Cap 71 provides that:

“18. Power of High Court to withdraw and transfer cases.

30 (1) On the application of any of the parties and after notice to the parties and after hearing such of them as desire to be heard, or of its own motion without such notice, the High Court may at any stage—

(a) transfer any suit, appeal or other proceeding pending before it for trial or disposal to any magistrate's court competent to try or dispose of it; or
35 (b) withdraw any suit or other proceeding pending in any court subordinate to it, and—

(i) transfer the suit or proceeding for trial or disposal to any court subordinate to it and competent to try or dispose of it; or

- 5 (ii) try or dispose of the suit or proceeding; (Emphasis is mine)
(iii) retransfer the suit or proceeding for trial or disposal to the court from which it was withdrawn.

(2) Where any suit or proceeding has been transferred or withdrawn under subsection (1), the court which thereafter tries that suit may, subject to any special
10 directions in the case of an order of transfer, either retry it or proceed from the point at which it was transferred or withdrawn."

I have looked at the plaint in Civil Suit No. 58 of 2021, filed at Kabale Chief Magistrates Court, and the Plaint in Civil Suit No. 076 of 2022 filed at the High Court in Commercial Division, and find that the dispute between the parties herein,
15 involves the same parties in respect of the same question of law namely that: Whether there was breach of the contract executed between the parties on 30th December, 2020.

Accordingly, I find that these two pending suits above, have similar sets of facts, and questions of law; to try these suits separately would result in a multiplicity of
20 proceedings, which this Court in accordance with section 18(1)(b) (ii) of the Civil Procedure Act, Cap 71 and section 33 of the Judicature Act, Cap 13, is enjoined to avoid.

This issue is therefore, answered in the affirmative.

Issue No.2: What remedies are available?

25 This Court having found issue (1) above in the affirmative, further finds that this application has merit.

This application is allowed and court makes orders that:

1. Civil Suit No. 58 of 2021 pending in the Chief Magistrates Court of Kabale at Kabale be withdrawn.
- 30 2. Civil Suit No. 58 of 2021 is hereby consolidated with Civil Suit No. 76 of 2022 instituted in the High Court Commercial Division.
3. Costs of this application shall be in the cause.

Dated, signed and delivered electronically this 27th day of January, 2023.

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SUSAN ABINYO
JUDGE