

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

COMMERCIAL DIVISION

MISCELLANEOUS APPLICATION NO. 1197 OF 2023

ASIIMWE DICKSON :::::::::::::::::::::::::::::: APPLICANT /DEFENDANT

VERSUS

CROWN BEVERAGES LIMITED :::::::::::::::::::: 1ST RESPONDENT/3RD PARTY

STANDARD CHARTERED BANK (U) LIMITED ::::::::::::::::::::RESPONDENT/PLAINTIFF

BEFORE HON. LADY JUSTICE HARRIET GRACE MAGALA

RULING

Background

This is an application that was brought under Order 1 Rule 14 of the Civil Procedure Rules. The Applicant is seeking for leave to issue a third party notice together with a copy of the Plaintiff upon the 1st Respondent and costs of the Application.

The Affidavit in support of the Application was deposited by the Applicant. The grounds of the Application are briefly that:

1. The Applicant obtained a salary loan from the 2nd Respondent while he was employed by the 1st Respondent;
2. The 1st Respondent dismissed the Applicant from employment wrongfully, depriving the Applicant of his salary, and causing his inability to service the loan;
3. The 2nd Respondent filed HCCS No. 0201 of 2023 against the Applicant seeking payment of the salary loan, interest and costs;
4. The Applicant in his written statement of defence pleaded that he was entitled to an indemnity or contribution from the 1st Respondent in respect of the suit filed by the 2nd Respondent;

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5. The Industrial Court of Uganda in Labour Dispute Reference No. 215 of 2020 decreed that the 1st Respondent is liable to repay the Applicant's salary loan;
6. The 2nd Respondent / Plaintiff will not suffer any prejudice if the application is granted; and
7. It is in the interest of justice that the application is granted.

Representation and hearing

This is an *ex – parte* application. The Applicant was represented by Mr. Brian Emurwon of M/s Emwuron & Co. Advocates. Counsel for the Applicant made oral submissions. He drew court's attention to the grounds of the Application which have already been set out above in the Background to the Application.

He submitted that the basis of the indemnity is that the Applicant was a former employee of the 1st Respondent and it was the wrongful termination of his employment that caused him to default on the loan repayment. Counsel for the Respondent referred court to **Labour Industrial Dispute Reference No. 215 of 2020: Ketra Aguti and Dickson Asiimwe versus Crown Beverages Limited** where the Head Judge of the Court, Hon. Lady Justice Linda Lillian Tumusiime Mugisha found that the 2nd Claimant (Dickson Asiimwe) was wrongfully and unlawfully discharged from his employment by termination and dismissal respectively. The Industrial Court further awarded the 2nd Claimant Ugx. 350,000,000 as general damages, a severance pay of Ugx. 89,804,838/=, one month's salary of Ugx. 29,934,946/= as payment in lieu of notice. Lastly, the Industrial Court ordered the Respondent to pay the 2nd Claimant's outstanding loan amounting to Ugx. 106,062,652/=.

Learned Counsel for the Applicant cited and relied on the case of **Semanda Isima Moses versus Airtel Uganda Limited & Blu Flamingo Limited, Miscellaneous Application No. 0996 of 2020** where Hon. Justice Duncan Gaswaga laid out the five principles that govern such applications. These are:

1. That the Applicant has sufficient grounds. Counsel for the Applicant drew court's attention to paragraphs 4,5,6,8 and 9 of the Affidavit in Support.
2. That it must be the same subject matter. Learned counsel referred court to paragraph 9 of the Affidavit in Support which is to the effect that one of the reliefs sought by the Applicant in the Labour Dispute was to order the 1st Respondent to repay the salary loan he obtained from the 2nd Respondent.



- 5 3. That the Applicant must prove the right of indemnity or contribution. To this end learned counsel for the Applicant referred court to paragraph 10 of his affidavit and the decision of the Industrial Court where the 1st Respondent was held liable to repay the Applicant's loan.
- 10 4. The absence of prejudice. The Applicant under paragraph 11 deposed that the 2nd Respondent was informed of the award before the present suit was filed.
- 15 5. That it is in the interest of justice that the application is granted. It was submitted for the Applicant that for the matter to be fully heard and determined, it was in the interest of justice that the 1st Respondent was added as 3rd Party.

Learned Counsel for the Applicant prayed that the Application be granted and costs be in the cause.

Issue

Whether a third party notice should be issued to the 1st Respondent

Determination

The law governing notice to third parties is set out in **Order 1 rule 14 (1) of the Civil Procedure Rules** as amended states that:

25 *"Where a defendant claims to be entitled to contribution or indemnity over against any person not a party to the suit, he or she may, by leave of court, issue a notice (hereafter called a "third party notice") to that effect".*

Third party procedure is a means for trial of questions between the Defendant and third party of liability of third party to make contribution or indemnify and not for joining of a third party as a defendant. According to the case of **Zanfra –vs – Duncan & Anor. [1969] THCD, 135 per Platt, J**

30 *"A third party is not a defendant unless the plaintiff decides to make him one and he is not concerned with the claim but with the contribution to the defendant".*



5 It can be discerned from the annextures to this application that while the Applicant was an employee of the 1st Respondent, he took out a salary loan from the 2nd Respondent whose repayment was premised on his salary. After he was dismissed from employment by the 1st Respondent, he was unable to service the loan which prompted the 2nd Respondent to file HCCS 0201 of 2023 seeking to recover a sum
10 of Ugx. 117,638,338 plus interest of 18.5% per annum from the date of breach until payment in full. The Applicant, following his dismissal from employment filed a labour dispute in the Industrial Court in 2020 and a decision in his favour was rendered on the 27th February 2023. A summary of the decision of the Industrial Court has been laid out above.

15 The Applicant, in his written statement of defence to HCCS No. 0201 of 2023 in summary pleaded that following his unlawful dismissal from employment as found by the Industrial Court, the 1st Respondent is liable to pay the loan obtained from the 2nd Respondent.

A reading of the Complaint, Written Statement of Defence and the decision of the
20 Industrial Court in Labour Dispute No. 215 of 2020 leaves no doubt in my mind that adding the 1st Respondent as a third party to the main suit shall enable the Parties and Court to conclusively determine the issues at hand in the main suit.

For reasons given above, this Application is allowed. The Applicant is hereby granted leave to file and serve a Third Party Notice upon the 1st Respondent in
25 accordance with Order 1 rule 14 (3), (4) and (5) of the Civil Procedure Rules as amended.

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The third party notice must be filed within the time limited for filing a defence, that is fifteen (15) days from the date of the order granting the leave.



5 The costs of this Application shall abide the outcome of the main suit.

Dated and signed at Kampala this **25th** day of **March 2024**.



Harriet Grace MAGALA

JUDGE

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Delivered electronically on ECCMIS this 27th day of **March 2024**.