

**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT KAMPALA  
CIVIL SUIT NO. 1202 OF 1998**

**M/S APOLLO CORPORATION LTD & ORS:..... PLAINTIFFS**

**VERSUS**

**REUMAN KANYORO :..... DEFENDANT**

**Before: The Hon. Principal Judge - Mr. Justice J.H. Ntabgoba**

**RULING**

“Apolo Hotel Corporation, Ltd” was formerly Apolo Hotel Corporation”. The Government desired to divest itself of it and thus converted it into a public Limited liability Company, namely, “Apolo Hotel Corporation, Ltd,” pursuant to S.25 of the **Public enterprises Reform and Divestiture Statute, 1993** which provides:-

“25(1) subject to the Statute the Companies Act shall apply to the divestiture of enterprises under this statute.

“(2) Where a public enterprise is subject to divestiture under class II, III or IV of the First Schedule to this statute and the enterprise is not already a public limited liability company under the companies Act, the enterprise shall be registered as a public limited liability company under that Act for the purpose of effecting the divestiture with the respective shareholding as prescribed by S.20 of this statute.”

Apolo Hotel Corporation falls under Class II of the Statute. According to its Memorandum and Articles of Association it was registered as a public limited liability company on 18<sup>th</sup> March 1998 and its certificate of incorporation was issued on the same date.

High Court Civil Suit No. 1202/98 was instituted against Reuman Kanyoro, on 12<sup>th</sup> November 1998 and the amended plaint filed on 12<sup>th</sup> July 1999. I will hereafter refer to Apolo Hotel Corporation, Limited as the plaintiff and to Reuman Kanyoro as the defendant.

The suit seeks to recover a sum of shs. 4, 706, 480/= from the defendant as a liquidated amount arising out of a breach of contract. The suit also seeks general damages, interest and costs (see Para 4 of the plaint). The facts constituting the cause of action alleged appear in paragraph 5 as follows:

“(a) Between May 1991 and April 1998 or thereabouts, the defendant enjoyed the **Hotel and accommodation services** of the plaintiff at the plaintiffs hotel as, inter alia, represented by a Hut Lease Agreement between the parties dated 1<sup>st</sup> November 1996 a copy whereof is attached hereto and marked as Annexure “AA”.

(b) the defendant left unpaid an outstanding bill of U.Shs. 4,706,480/= on account of **hotel accommodation Services accumulated** with effect from March 1996 to April, 1998 as **per numerous Invoices** which shall be adduced at the trial and are indicated on the defendants’ statements of account hereto and marked “B”.

(c) Despite several reminders from the plaintiff, the defendant in breach of his obligation has to date persistently refused, neglected and or failed to settle his said indebtedness.

(d) By reason of the matters complained of above, the plaintiff has suffered grave financial loss and great inconvenience, all of which it holds the defendant liable.”

Paragraph 1 of the plaint describes the plaintiff as a scheduled Corporation established by statute and also registered as a limited liability company under the laws of Uganda. Paragraph 2 avers that the plaintiff carries on business in Uganda under the name and style of **Sheraton Kampala Hotel.**

The W.S.D challenges, inter alia, the contents of paragraph 2 and also ostensibly paragraph 1, basing on the “Hut Lease Agreement” Annexure “AA” of the plaint. The W.S.D. seems not to challenge the validity of the Agreement but avers that Sheraton Kampala Hotel cannot be the plaintiff and that, on the authority of *Auto Garage & Ors - vs - Motokov (No.3) [1971] E.A. 514*, the plaintiff is not identifiable and therefore no cause of action can be raised by a non identifiable plaintiff. Mr. Mugenyi argued, in his preliminary objection, that the plaintiff, Apolo Hotel Corporation cannot exist both as a statutory Corporation and as a limited liability company. He further argued that it is not a scheduled Corporation since it does not appear in the schedule of the latest of Statutory Instrument No. 77 of 1998 which was made on the 19<sup>th</sup> day of November 1998.

Ms. Basaza Waswa, learned Counsel for the plaintiff, produced the Memorandum and Articles of Association and the Certificate of Incorporation of Apolo Hotel Corporation, Limited which bear the date of the 18<sup>th</sup> Day of March 1998. No doubt, after turning the Corporation from a Statutory one to a public limited liability company under S.25 of the Public Enterprises Reform and Divestiture Statute, 1993, it ceased to be a Scheduled Corporation. It became a limited liability company. Whereas therefore it was not correct to refer to the plaintiff as both a limited liability company and a scheduled corporation, that cannot be said to have affected its identity so as to render its suit liable to be struck out pursuant to order 6 rule 29 of the Civil Procedure Rules. It appears, Mr. Mugenyi, with due respect, was not aware of the subjection of the Corporation to the provisions of S.25 (2) of the Public Enterprises Reform and Divestiture Statute. And since it was described both by its former and its present name, the Court would have power to strike out its former name and leave its present name. To strike out the suit on the ground that the plaintiff was given its

wrong (former) name and its right (present) name would be in contravention of Article 126(2) (e) of the Constitution that:-

“(2) In adjudicating cases of both a Civil and Criminal nature, the Court shall, subject to the law, apply the following principles: (a) - (d)

(e) substantive justice shall be determined without undue regard to technicalities.”

Besides, striking out the former title of the plaintiff and leaving its present title will occasion no injustice to the defendant. In any case, the fact that under S.25 (2) of the Public Enterprises Reform and Divestiture Statute a Corporation should be converted into a limited liability company as indeed was the case with regard to Apollo Hotel Corporation disproves Mr. Mugenyi’s contention, save, of course, in as far as the subject matter ceases to be a public corporation and assumes the character of a limited liability company which is subject to the provisions of the companies Act. It can, however bear both the titles of “Corporation” and “Limited” as it is with the *Apollo Hotel Corporation Limited.*

I will now pass on to the other preliminary objections raised by Mr. Mugenyi. One of them is based on the provisions of Order 7 Rule 29. Counsel argues that the suit relies on the provision by the plaintiff to the defendant of hotel and accommodation services, and yet at the same time refers to land matters. In this regard, Counsel referred to paragraph 5(a) of the amended plaint which alleges that:

“(a) Between May 1991 and April, 1998, the defendant enjoyed the hotel and accommodation services of the plaintiff’s hotel as, inter alia, represented by a Hut Lease Agreement between the parties dated 1<sup>st</sup> November 1996 a copy whereof is attached hereto and marked as Annexure “AA”.

In paragraph 5(b) it is averred that:-

“The defendant left unpaid an outstanding bill of U. Shs. 4,706,480/= on account of hotel and accommodation services accumulated with effect from March 1996 to April

1998 as per numerous Invoices which shall be adduced at the trial and are indicated on the defendant's statements of account attached hereto and marked Annexure "B".

Now, in this case the plaintiff is suing upon accumulated bills incurred and supported by invoices and an account. The plaintiff relies on the Hut Lease Agreement as the bases under which such bills arose. I have to remind both Counsel that the Hut Lease Agreement offends against S.66 of the Advocates Act and should not have been recognised by this court. That means that it cannot be relied on in this case. However, there is an allegation supported by invoices on account and the invoices cannot be rejected on the same grounds the Hut Lease Agreement has been rejected. Whether those invoices are of any probative value or not cannot be a question for investigation when considering the preliminary objection. They should be subjected to the test during the hearing of the substantive case. Indeed nobody has stated that the invoices arose out of the Hut Lease Agreement although I notice that the W.S.D. refers to a Hut Lease Agreement arising out of which a set-off has been pleaded. The invoices and the Hut Agreement acknowledged in the W.S.D. will no doubt constitute triable issues.

In short, the fact that the Hut Lease Agreement pleaded in the plaint happens to offend against S.66 of the Advocates Act and is inadmissible in evidence cannot bar the plaintiff from adducing evidence on invoices and proving it if it can.

I have examined the plaint in this case against rule 11 of order 7 which is the rule that provides the grounds upon which a plaint may be rejected. The rule provides that:

“(11) The plaint shall be rejected in the following cases:

- (a) Where it does not disclose a cause of action;
- (b) Where the relief claimed is undervalued and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails

to do so;

- (c) where the relief claimed is properly valued but an insufficient fee has been paid, and the plaintiff, on being required by the Court to pay the requisite fee within a time to be fixed by the Court, fails to do so;
- (d) Where the suit appears from the statement in the plaint to be barred by any law;
- (e) Where the suit is shown by the plaint to be frivolous or vexatious.”

This suit does not fall under any of these provisions.

Another point raised by Mr. Mugenyi was with regard to the inscriptions in the bottom right hand corner of the Sheraton Kampala Hotel as follows:

“The Sheraton Kampala Hotel is owned by the Government of Uganda and operated by the Sheraton overseas Management Corporation as its Agent.”

In my opinion such trade or business slogans cannot change the legal character of “Apolo Hotel Corporation Limited. Therefore, Mr. Mugenyi’s argument that in view of those slogans, the plaintiff should have been the Attorney General cannot be sustained. The legal position is now that the plaintiff, by its incorporation, is a limited liability company which can sue and be sued in its own name.

In the result, I find that the suit discloses the plaintiff and a cause of action against the defendant, subject to evidence that should be adduced. I, accordingly, dismiss the preliminary

objection raised by Counsel for the defendant with costs. I order that the suit be set down for hearing as expeditiously as may be, in any case, not later than a month hereof.

5/9/2001

J.H. Ntabgoba  
Principal Judge

*Uploaded by kivumbi Sheila.*