

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

MISCELLANEOUS APPLICATION NO 88 OF 2004

Arising from Civil Suit No. 110 OF 2004

ALPHA INTERNATIONAL]

INVESTMENTS LIMITED] PLAINTIFF/RESPONDENT

VERSUS

ALLI GABE AKIDA: DEFENDANT/APPLICANT

29th June, 2005.

BEFORE: THE HON. MR. JUSTICE R.O. OKUMU WENGI

JUDGMENT:

This appeal arises out of a civil suit brought against an advocate by a Judgment Creditor in an earlier case before the Chief Magistrates Court. The facts are that in execution of a judgment in Civil Suit No.655 of 2001 the judgment debtor one Taban Issa had been put in civil prison to recover the decretal sum of sum of Shs.573,000/=. The advocate who is the present who is the present appellant issued a personal cheque to his counterpart M/s Basaza Wasswa & Co Advocates on the basis of which his client was released from civil prison. In subsequent days the advocates cheque was dishonored and he paid cash of Shs.325,000/= leaving a balance of Shs.248,000/=. The case from which this appeal arises was then filed to recover this sum of Shs.248,000/= from the advocate. In essence therefore the suit was brought to the cheque.

In arguing this appeal Mr. Nyote learned counsel for the appellant contended that the suit was incompetent as the plaintiff was not a drawee of the cheque which had been written in the names of M/s Basaza Waswa & Co Advocates, who is the advocates for the Respondent/Plaintiff. Mr. Nyote argued that the Plaintiff could not sue on the cheque and as such there was no cause of action. Mr. Basaza Wasswa asked this court to dismiss the appeal.

I have examined the court record and the conclusions reached there along the suit to contrive to be heard on its merits. It is clear that the plaintiff of Respondent was not a holder of the cheque in issue and could therefore not sue upon it and has no cause of action against the defendant: **Auto Garage vs Moroke** (1971) EA 514. The Plaintiff was also not a holder of the cheque within the meaning of that word in the Bills of Exchange Act. See **Arab Bank Ltd vs Ross** (1951) 2 QB 216. As such it could not sue on the cheque alter. Further still I did not see any notice of dishonour and none was pleaded in the Plaint without the notice and pleading the Plaintiff could not sustain a suit on this bill: **Emile Habib Bateekha vs Rosen_Alam Eddin** (1970 (1) ALR 205 at 206. See also **Dhaneshwer Vajeshanker Metha vs Doka Fatuhnal** (1951) 18 EACA 126. This being the case, once no notice of dishonour was given and pleaded

the defendant would be discharged not only on the cheque but also on any antecedent obligation. **Raichur vs Uganda Chemist** Civil Appeal No.61 of 1956 unreported. From the above it is clear that the plaintiff's suit discloses no cause of action and must be rejected.

But even looking at the case as a whole, one gets the impression that an advocate is being sued in order to realize a decree. By issuing his check and attempting to ensure its discharge his is being held down on the cheque. The new suit is in essence a suit for recovery of the decretal sum already under execution. Besides what I have stated above this kind of case is brought in abuse of the court process is frivolous and vexatious to say the least. It is multiplying proceedings to engulf the advocate of the elusive judgment debtor. It is not in good taste firstly because a decree is not supposed to be the subject of a new suit to recover it. Further still if the recovery is directed at an advocate who did not get value for a cheque he issued he would not be liable either on the cheque or in contract as there was no consideration for it. For this matter it would be inconceivable if the Plaintiff would have turned against its own lawyers and sued for the balance

on the decretal sum; and the Lawyers in turn would apply to join the present appellant. Such suit would equally be abusive of the court process. In the result this appeal is allowed, the order of the

Magistrate is set aside and the Plaintiffs suit is dismissed as the Notice of dishonour of the cheque could not and was not pleaded. The Respondent will pay the costs of this appeal.

R.O. Okumu Wengi

JUDGE

29/6/2005.