

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT MUKONO

MISCELLANEOUS APPLICATION NO.130 OF 2021

[ARISING FROM MISCELLANEOUS APPLICATION NO. 108 OF 2021]

[ARISING FROM ORIGINATING SUMMONS NO.002 OF 2020)

AL SHAFI INVESTMENT GROUP LCC APPLICANT

VERSUS

1. ABU DHABI ISLAMIC BANK

2. ABERDEEN REAL ESTATES LIMITED

3. EMIRATES AFRICA LINK LIMITED RESPONDENTS

BEFORE: HON JUSTICE DR. FLAVIAN ZEIJA

RULING

This is an application brought under section 98 of the Civil Procedure Act and Order 44 Rule 2 and 4 of the Civil Procedure Rules for leave to appeal the ruling and orders of the Hon. N.D.A Batema in miscellaneous application No. 108 of 2021 arising from origination summons No. 2 of 2020.

The grounds upon which this application is hinged are briefly that;

- 1. The Applicant attached the shares in the 2nd and 3rd Respondents to recover the decretal sum in Civil Suit No. 695 of 2017*



2. The 1st Respondent filed Originating Summons No. 2 of 2020 seeking to foreclose on various pieces of land allegedly mortgaged to it by the 2nd & 3rd Respondents.
3. The foreclosure on the aforementioned properties has a direct effect on the value of the shares already attached by the Applicant.
4. The Applicant filed Miscellaneous Application No. 108 of 2021 before this Honorable Court seeking to be added as a party to Originating Summons No. 2 of 2020.
5. The Applicant had a number of illegalities it intended to bring to the attention of court upon being added as a party to the suit.
6. On the 14th day of December, despite the various evidence apparent on the record, the trial judge made a ruling dismissing the Applicant's application to be added as a party to Originating Summons No. 2 of 2020.
7. The dismissal of application to be added as a party is unfair to the Applicant who attached shares in the 2nd & 3rd Respondents to recover a decretal sum of \$40,000,000 (United States Dollars Forty Million only)
8. That it is just and fair that the application is granted to allow the Applicant appeal against the ruling of the learned judge.
9. The Applicant has filed a Notice of Appeal and Letter requesting for a certified record of proceedings.
10. The intended appeal arising from the ruling and orders of the High Court in Miscellaneous Application No. 108 of 2021 is of merit and has high chances of success.
11. The Applicant is not guilty of dilatory conduct in instituting this application.

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12. *It is in the interest of justice that leave to appeal is granted to the Applicant to appeal against the ruling in Miscellaneous Application No. 108 of 2021.*

In reply, it was deponed for the 1st Respondent that the Applicant has failed to demonstrate how the foreclosure on the 2nd & 3rd Respondents' right to redeem the mortgaged properties will dilute or diminish their shares and the applicant therefore has no chance of success on appeal. Secondly, that the Applicant does not prove to the required standards allegations of forgery, fraud and collusion highlighted in the affidavit in support of the application. Thirdly, the Applicant's intended appeal is incompetent and does not stand any chances of success because of procedural impropriety and failure to take the appropriate steps required to commence an Appeal to the Court of Appeal. Fourthly, that the Applicant is not a recognized entity under the laws of Uganda and therefore the intended appeal has no chances to succeed because the Applicant is not an existing party in law.

On behalf of the 2nd & 3rd Respondents, Counsel Nicholas Mwasame deponed an affidavit in reply basically stating that the Applicant was not privy to the loan agreement / mortgage deed that was entered into between the 1st Respondent and the 2nd and 3rd Respondents and the Applicant could not have been added as a party to the Originating Summons. That the justifications pleaded by the Applicant in its affidavit in support of the application for leave to appeal do not merit serious judicial consideration since the Applicant was not privy to the mortgage deed

