THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(COMMERCIAL DIVISION)

MISCELLANEOUS APPLICATION NO. 1869 OF 2022

(ARISING OUT OF CIVIL SUIT NO. 0899 OF 2022)

OMER FARMING COMPANY LTD:: APPLICANT

VERSUS

REHOBOTH AGRICULTURAL

MANAGEMENT SERVICES LTD:: RESPONDENT

BEFORE: HON. LADY JUSTICE HARRIET GRACE MAGALA

RULING

Background

A consulting agreement was executed between the Parties in September 2019 with a commencement date of 11th September 2019. The same would remain in force until the Respondent was fully paid from the proceeds of Season B of 2017 or at such time as agreed to by the Parties. The Parties subsequently executed another Agreement on the 2nd August 2018 which terminated and superseded the Agreement executed in 2017.

By a letter dated 30th January 2019, the Applicant terminated the Contract. However, prior to this, on the 23rd January 2019 the Respondent issued a statutory demand to the Applicant demanding for a payment of USD $ 112,157.

The Applicant filed **Miscellaneous Cause No. 21 of 2019: Omer Farming Company Ltd. Versus Rehoboth Agricultural Management Services Ltd.** The suit was filed in the Civil Division of the High Court wherein the Applicant applied to court to set aside the Statutory Demand. The suit was heard by the Hon. Justice Ssekaana Musa who on the 14th June 2019 set aside the Statutory Demand and no order was made as to costs.

The Respondent then lodged **Civil Appeal No. 293 of 2019: Rehoboth Agricultural Management Services Limited versus Omer Farming Company Ltd** in the Court of Appeal. The Appeal is against the Ruling and Order of Hon. Justice Ssekaana Musa, J in Misc. Cause No. 21 of 2019. The Registrar, Court of Appeal in a letter dated 12th January 2022 requested the Parties to file conferencing notes in respect of the said appeal.

On the 12th October 2022, the Respondent filed **HCCS No. 0899 OF 2022: Rehoboth Agricultural Management Service Ltd. Versus Omer Farming Company Ltd.** The cause of action in the said suit is for breach of contract. The claim is for USD $ 121,847 broken down as USD $ 87,320 being payments due for the months of October 2018 to January 2019, USD $ 21,830 being a payment in lieu of notice of termination and USD $ 12,017 being legal fees for the collection of the outstanding sum.

After the Respondent filed **HCCS 0899 of 2019,** this prompted the Applicant to lodge the present application (**MA 1869 of 2022)** seeking for declarations and orders that:

1. HCCS 0899 of 2022 be dismissed for want of jurisdiction;
2. The subject matter of HCCS 0899 of 2022 is the subject of Civil Appeal No. 293 of 2019; and
3. Cost of the Application.

Hearing and representation

The Applicant was represented M/s ALP Advocates while the Respondent was represented M/s Kirunda & Wesige Co. Advocates. When the matter was called for mention the Parties were urged to consider an out of court settlement. But in the interest of time, Parties were given directions to file written submissions for court to determine the matter in the unlikely event that the option to settle the matter amicably did not yield any positive outcome.

The Application

The orders sought for by the Applicant in this Application and the grounds of the Application have been laid out in detail above in the background to this Application. I shall therefore not reproduce them here. I only wish to add that Court took into consideration the Affidavit in support of the application that was deposed by Estella Mujuni, the Business Manager of the Applicant and the affidavit in reply to the Application that was deposed by Moses Muziki, an advocate who was involved in advising the Respondent since the dispute between the Parties arose.

Applicant's submissions

It was the submission of the Applicant that **Civil *Suit No. 0899 of 2022*** should be dismissed for want of jurisdiction. This was based on the fact that the Consulting Agreement has a clear and binding arbitration agreement between the parties under clause 16. Learned Counsel for the Applicant submitted that section 9 of the Arbitration and Conciliation Act, Cap 4 outs the jurisdiction of this Court. The section states that:

> "*Except as provided in this Act, no court shall intervene in matters governed by this Act".*

The Applicant cited and relied on the case of **MSS *XSABO Power Ltd and others versus Great Lakes Energy Company NV HCMA No. 1567 of 2022*** where court held that**:**

> *"Modern arbitration is designed to exist outside the court system. It is for this reason that section 9 of The Arbitration and Conciliation Act provides specifically that except as provided in the Act, no court shall intervene in matters governed by the Act. Courts have a fourfold role in the arbitral process: to prevent a party who has agreed to arbitrate from pursing his claim by litigation…Restricting court intervention in order to foster arbitration as a private process controlled by its parties, however means that those parties must be prepared to forego court access except in the most egregious of cases".*

Learned counsel for the Applicant therefore prayed that this court be pleased to dismiss Civil Suit No. 0899 of 2022.

It was also the contention of the Applicant that filing of Civil Suit No. 0899 of 2022 was an abuse of the court process for two reasons. The first was the existence of subsisting **Civil Appeal No. 0293 of 2019: Rehoboth Agricultural Management Services Limited versus Omer Farming Company Ltd** and the second a valid and binding agreement to refer any dispute between the parties to arbitration. Learned Counsel for the Applicant relied on the case of **Attorney General and Another versus Mark Kamoga, Civil Appeal No. 8 of 2004** where the Supreme Court defined abuse of court process as: "*Abuse of court process involves the use of a process for an improper purpose or a purpose for which the process was not established".*

It was further submitted for the Applicant that the determination of ***Civil Appeal No. 293 of 2019*** would entitle the Respondent to the same money it seeks to reclaim in ***Civil Suit No. 0899 of 2022*** which implies that the Respondent has instituted dual proceedings in both the High Court and Court of Appeal seeking recovery of the same amount of money from the same person. This, according to the Applicant offended the *Lis Pendens* Rule as provided for under section 6 of the Civil Procedure Act Cap 71.

Learned Counsel for the Applicant concluded his submission by praying that this Honorable Courts grants the Applicant the prayers sought for.

Respondent's Submissions

The Respondent's submissions were based on four grounds:

(a) That the Application is improperly before court, incompetent and without merit.

The Respondent submitted that the Applicant could not seek to move court under the Civil Procedure Act, the Civil Procedure Rules and the Judicature Act to dismiss HCCS No. 0899 of 2022 on grounds that the dispute was the subject to an arbitration agreement between the Parties. The Respondent submitted that this Court did not have the jurisdiction to entertain such a prayer let alone at this stage of the proceedings. The Respondent cited and relied on the Supreme Court case of **Babcon Uganda Limited versus Mbale Resort Hotel Limited, Civil Appeal No. 6 of 2016** where the Court held that the Appellant could not invoke the general provisions of the section 66 of the Civil Procedure Act when there was a specific law which governed the proceedings of the case. The same court went on to state that the Arbitration and Conciliation Act was a latter piece of legislation from the Civil Procedure Act. The provisions of the Arbitration and Conciliation Act(ACA) must take precedence over the Civil Procedure Act in relation to matters governed by the ACA.

It was the Respondent's submission that the net effect of the reliefs the Applicant seeks is to move court to exercise its powers under section 5 of the ACA to dismiss HCCS No. 0899 of 2022 on the basis that the dispute is subject to an arbitration agreement. That the Applicant did not file this Application under any of the provisions of the ACA. The Respondent also observed that the Applicant has never filed a written statement of defence. That the pleadings in HCCS No. 0899 of 2022 have never been closed.

The Respondent relied on **section 5 on Stay of legal proceedings of the Arbitration and Conciliation Act** which states that:

"(1) A judge or a magistrate before whom proceedings are being brought in a matter which is the subject of an arbitration agreement shall, if a party so applies <u>after the filing of a statement of defense and both parties have been given a hearing, refer the matter back to arbitration unless he or she finds –</u>

(a) that the arbitration agreement is null and void, inoperative or incapable of being performed; or …

(2) Notwithstanding that an application has been brought under subsection (1) and the matter is pending before the court, arbitral proceedings may be commenced or continued and an arbitral award may be made".

The Respondent's submissions was further fortified by the Supreme Court decision in **National Social Security Fund & Anor versus Alcon International Limited, Civil Appeal No. 15 of 2009 [2013] UGSC 4 (8th February 2013)** where the Court held that the court can only refer a matter to arbitration after parties have complied with the provisions of section 5 of the Arbitration and Conciliation Act. The Chief Justice, Benjamin Odoki (as he then was) held that:

"*In my view, the learned trial judge prematurely referred the matter to arbitration thereby depriving the court of the opportunity to determine whether the reference to arbitration complied with the provisions of section 5 of the Arbitration Act".*

The Respondent therefore concluded their submission by stating that this court did not have the jurisdiction to either stay the proceedings on HCCS No. 0899 of 2022 or dismiss it.

(b) That the arbitration agreement between the Parties is inoperative, incapable of being performed and does not oust the jurisdiction of the Court.

The Respondent contended that the conduct of the Applicant rendered the arbitration agreement between the inoperative and incapable of being performed according to section 5 (1)(a) of the Arbitration and Conciliation Act. It was the submission of the Respondent that in line with the provisions of the agreement, communications were sent out to the Applicant proposing persons whom the dispute could be referred to for arbitration. The Applicant did not respond to the Respondent's letters. The Applicant frustrated the Respondent's efforts in referring the dispute to arbitration and cannot therefore be seen at this point to conveniently plead that the dispute is the subject of an arbitration agreement.

The Respondent supported their argument by relying on the case of **AC Yafeng Construction Company Limited versus The Living World Assembly & Others, Civil Suit No. 739 of 2021** where this Court clarified on the effect of a party to an arbitration clause's failure to act in referring a dispute to arbitration when it held that:

"Section 5(1) of the Arbitration and Conciliation Act requires a court before which proceedings are being brought in a matter which is the subject of an arbitration agreement, if a party so applies after the filing of a statement of defence and both parties having been given a hearing, to refer the matter back to the arbitration unless the court finds;- (a) that the arbitration agreement is null and void, inoperative or incapable of being performed; or (b) that there is not in fact any dispute between the parties which regard to the matters agreed to be referred to arbitration.

The Court is obliged to refer the matter to the arbitration unless the court finds; that the arbitration agreement is null and void, inoperative or incapable of being performed.

It seems to me that the focus is on the administration of the arbitration itself rather than on the merits of what was to be referred to arbitration. While "inoperative" covers situations where the arbitration agreement has become inapplicable to the parties or their dispute, "incapable of being performed "relates to situations where the arbitration cannot effectively be set in motion. Therefore, an arbitration agreement may be found to be inoperative or incapable of being performed where the parties have, by virtue of having identified a non-existent appointer, not agreed on an appointment procedure at all; or where the parties agreed a procedure which requires them to agree, but one has failed to act, or both have failed to act as required".

The Respondent in conclusion submitted that this court was clothed with jurisdiction to hear the dispute in HCCS No. 0899 of 2022 since the arbitration clause was incapable of operation.

(c) That the matters in HCCS No. 0899 of 2022 are fundamentally and /or substantially different from the matters in Court of Appeal Civil Appeal No. 0293 of 2019.

Learned Counsel for the Respondent submitted that the substantive issues in HCCS No. 0899 of 2022 were fundamentally different from those in Civil Appeal No. 293 of 2019. To this end, the Respondent laid out what the issues were in the high court civil suit, what the grounds of appeal were and the nature of reliefs

sought. The Respondent came to the conclusion that HCCS No. 0899 of 2022 did not offend the *Lis pendens Rule.* To support his argument counsel relied on the case of **Springs International Hotel Ltd. Versus Hotel Diplomate Ltd. & Anor., Civil Suit No. 227 of 2011, section 6 of the Civil Procedure Act** and **Civil Procedure and Practice in Uganda, 2nd Edition at page 114** where the learned author Musa Ssekana elaborated as follows:

> "These *words "**directly** and **"substantially"** are used in contradistinction to the words **"incidentally"** and **"collaterally"** in issue. Section 6 applies only in cases where the whole of the subject matter in issue are common. Therefore, section 6 would apply only if there is identity of the matter in issue in both the suits, meaning thereby, that the whole subject matter in both proceedings is identical. This provision will not apply where of the matters in issue are common and will apply only when the entire subject in controversy is the same".*

The Respondent in conclusion prayed that Court finds that the matters in issue in both cases are substantially and fundamentally different and that it is vested with the jurisdiction to determine HCCS No. 0899 of 2022.

(d) That the Application is an abuse of the court process

It was the submission of the Respondent that the Applicant seeks to plead and rely on an arbitration clause in the agreement which she refused to honor when called upon to refer the dispute to arbitration. That by this conduct therefore the Applicant rendered the arbitration clause unenforceable. The Respondent drew court's attention to letters written to the Applicant nominating Rtd. Hon. Justice

Edmund Sempa Lugayizi and Mr. Peter Walubiri as persons to whom the dispute should be referred for arbitration and these letters were not favored with any response from the Applicant.

The Respondent further submitted that the Applicant has a counter demand against the Respondent in opposition to the Statutory Demand which is the subject of Civil Appeal No. 293 of 2019. As at the time the parties filed their submissions the Applicant had not taken any single step towards recovering the said sums.

It was therefore the submission of the Respondent that this application is an abuse of the court process in which case court in exercise of the powers vested upon it by section 98 of the Civil Procedure Acts and sections 17(2) and 33 of the Judicature should dismiss the application.

Learned Counsel for the Respondent also supported his argument by citing and relying on the case of **Attorney General & Anor. Versus James Mark Kamoga & Anor., Civil Appeal No. 08 of 2004 at page 7** where the Supreme Court held that abuse of court process involves the use of the process for an improper purpose for which the process was not established. Black's Law Dictionary [6th Edition] states that:

> *"A malicious abuse of the legal process occurs when the party employs it for some unlawful object, not the purpose which it is intended by the law to effect; in other words, a perversion of it".*

In conclusion, it was the prayer of the Respondent that this application should be dismissed with costs to the Respondent.

Determination

Whether the Application is improperly before court, incompetent and without merit

It was the submission of the Respondent that the Application was improperly before the court, incompetent and without merit on the basis that the Application was brought under the general provisions of the **Civil Procedure Act cap. 71** yet, the specific law in place is the **section 5 of The Arbitration and Conciliation Act cap. 4**, which grants the powers to court to grant the Applicant, the relief it seeks. Learned Counsel for the Respondent relied on the case of ***Babcon Uganda Ltd Versus Mbale Resort Hotel Ltd (supra).***

It is now trite that citing a wrong provision or the law or failure to cite a provision of the law under which a party seeks a redress before court is a technicality which should not obstruct the cause of justice. See Article **126 (2) (e) of the Constitution** and ***Alcon International Ltd Versus The New Vision Publishing and Printing Company Ltd SCCA NO. 04 of 2010.*** I must however add that Article 126 (2) (e) should not be generally applied but subject to the circumstance of each case lest its abused.

I note that the case of ***Babcon Uganda ltd (supra)***, is quite distinguishable from the facts of the current matter before court. In that case, the Appellant was creating a right of appeal under the general provisions of the Civil Procedure Act yet an appeal was restricted by **section 9 of The Arbitration and Conciliation Act**.

The second aspect of the objection by the Respondent to this Application was that, **Section 5 of the Arbitration and Conciliation Act** is applicable only when the

defendant has filed a defence. In the Supreme Court case of ***NSSF and another Versus Alcon International Ltd SCCA No. 15 of 2009*** which was also cited and relied on by the Respondent, it was observed that, the court cannot invoke its inherent jurisdiction in referring the matter to arbitration when there is an express statutory provision dealing with the matter like that one. The Learned Chief Justice Benjamin J. Odoki (as then he was) observed that; "… *both parties were not given a hearing regarding the propriety of referring the matter to arbitration".* He then concluded that it was premature for the court to refer the matter to arbitration before determining if there was compliance with **Section 5 of the Arbitration and Conciliation Act**.

My understanding of **section 5 of The Arbitration and Conciliation Act** is that the court can only determine the propriety of referring the matter for arbitration after filing of the defence by the defendant or after pleadings have closed. And it's after the matter is called for hearing that either of the Parties raises an objection to the matter being before court. The party objecting the moves court to have the dispute referred to arbitration. In the instant case, the Applicant, who is the defendant in **HCCS No. 0899 of 2022** has never filed their written statement of defense. The only document on the court record is a notice of intention to defend the suit.

Secondly, the Applicant disputed the jurisdiction of this court to entertain the Respondent's claim in the main suit on the basis of existence of an arbitration agreement between the Parties. The Applicant however, did not specifically pray for the dispute to be referred to arbitration in accordance with clause 16 of the Agreement executed between the Parties on the 2nd August 2018. In any case, if

such prayer were to exist, it would be premature on the basis that no written statement of defence has been filed by the Defendant/Applicant.

This court therefore finds that the dispute between the Parties cannot at this stage be referred to arbitration because the Applicant has never complied with the requirement of section 5(1) of the ACA in as far as filing a written statement of defence is concerned. The pleadings have never been closed. If the court referred the dispute to arbitration at this stage, this would be acting prematurely and in contravention of the ACA.

The Respondent drew court's attention to the frustration they met in trying to refer the matter to arbitration as seen from their affidavit in reply at paragraph 9 and paragraph 5 (g) of the Plaint. The court would be interested in the Applicant/Defendant's response to the alleged frustration of the arbitration agreement. It is at this point that the court would then determine that the said arbitration agreement is inoperative or incapable of being performed within the meaning of section 5 (1)(a) of The Arbitration and Conciliation Act. In the absence of a written statement of defence, I shall not delve into resolving the issue as to whether the arbitration agreement is null and void, inoperative or incapable of being performed.

Whether HCCS No. 0899 of 2022 offends the *lis pendens rule*

The term Lis *pendens was* defined in the case of ***Springs International Hotel Ltd V Hotel Diplomate Ltd and another Civil Suit No. 227 of 2011,*** while making reference to the **8th Edition of the Black's Dictionary** as a pending suit or action. The same is provided for under **section 6 of the Civil Procedure Act** which states that:

"No court shall proceed with the trial of any suit or proceeding in which the matter in issue is also directly and substantially in issue in a previously instituted suit or proceeding between the same parties, or between parties under whom they or any of them claim, litigating under the same title where that suit or proceeding is pending in the same or any other court having jurisdiction in Uganda to grant the relief claimed".

According to Yorakamu Bamwine, J (as he then was) in the case of **Tindyebwa Stephen versus Alpha International Investments Ltd., MA 0789 of 2005,** the provision of section 6 of the Civil Procedure Act is couched in mandatory terms.Therefore, when a question arises as to the competence of a suit or matter in reference to this Section, the court ought to stay the subsequent suit.

The test applied when determining whether the suit offends the *lis pendens rule* was well laid out in the case of ***Springs International Hotel Ltd V Hotel Diplomate Ltd and another (supra)*** as:

a) *whether the matter(s) in issue in the instant suit are directly and substantially the same as the matters in issue in a previously instituted suit;*
b) *whether the parties in the previous suit are directly or substantially the same as in the subsequent suit; and*
c) *whether the suit is proceeding or pending in the same or any other court having jurisdiction to grant the reliefs claimed.*

The second and third aspects of the test are not in dispute. What is in dispute is whether the matters in issue in HCCS 0899 of 2022 are directly and substantially the same as the matters in issue in Court of Appeal Civil Appeal No. 293 of 2019.

For this issue to be resolved, it is pertinent that the grounds of appeal in the Civil Appeal and the claim in HCCS 0899 of 2022 are laid out.

The grounds of appeal in Court of Appeal Civil Appeal No. 293 of 2019 are that :

(a) The Learned Trial Judge erred in law and in fact when he failed or refused to apply himself to the statutory provisions on the setting aside of a statutory demand, thereby arriving at a wrong conclusion;

(b) The Learned Trial Judge erred in law and in fact when he misdirected himself as to what the Applicant was required to show in order to justify the setting aside of the statutory demand, and thus arrived at a wrong and erroneous decision;

(c) The Learned Trial Judge erred in law and fact when he misdirected himself as to what amounts to an ascertained debt in insolvency proceedings;

(d) The Learned Trial Judge erred in law and fact when he held that the Appellant's statutory demand was merely used to bring improper pressure to bear on the Respondent in order to collect an unascertained debt;

(e) The Learned Trial Judge erred in law and in fact when he improperly held that there was no ascertained debt between the Parties;

(f) The Learned Trial Judge erred in law and in fact when he held that there was a substantial dispute whether the debt was owing or was due;

(g) The Learned Trial Judge erred in law and in fact when he failed to properly appraise the evidence before him and this arrived at several erroneous findings; and

(h) The Learned Trial Judge erred in law and in fact when he disregarded crucial evidence and arguments filed and made by the Appellant, thereby arriving at the wrong conclusion.

I would wish to point out two things:

First is that one of the issues in Miscellaneous Cause No. 21 of 2019 out which the Court of Appeal Civil Appeal arises was; "***Whether the Applicant (Omer Farming Company Limited) is indebted to the Respondent (Rehoboth Agricultural Management Services Ltd.) to a tune of USD $ 112,157".***

Second is that according to the Statutory Demand, the amount claimed was USD $ 112, 157 which was particularized as total outstanding sums based on billed invoices, payment in lieu of termination and legal fees payable for collection of outstanding sums.

The Respondent's claim in HCCS No. 0899 of 2022 for breach of contract, payment of USD $ 121,847 for services rendered to the Defendant, general damages, interest on the pecuniary awards and costs of the suit. The amount claimed was broken down as USD $ 87,320 being an outstanding payment for a period of four months. For each month, the Plaintiff was to be paid USD $ 21,830. USD $ 21,830 being payment in lieu of notice of termination and USD $ 12,017 being legal fees for the collection of the outstanding sum.

I have observed that the Respondent in this case relied on the same invoices to support their claim in HCCS No. 0899 of 2022 and their Statutory Demand. There is however an inconsistency in respect of Invoice No. 1110018 issued for the October 2018. According to the Statutory Demand, the amount claimed was USD $ 18,500.

But according to the Plaint, the amount for said period was reflected as USD $ 21,830 (monthly fees of USD 18,500 plus USD 3,330 being 18% VAT). I also observed that the amount of money claimed in the Statutory Demand for the months of November 2018 to January 2019; and the payment in lieu of notice of termination were less 6% Withholding Tax. However, the amount of money claimed as outstanding payment in the Plaint was inclusive of the 6% Withholding Tax.

The determination of whether the in issue in the instant suit are directly and substantially the same as the matters in issue in the civil appeal is a question of fact. According to the documents on the court record, the Statutory Demand that led to the filing of Miscellaneous Cause No. 21/2019 and subsequently Civil Appeal No. 293 of 2019; and HCCS No. 0899 of 2022 are all premised on the same Consulting Agreement executed on the 2nd August 2018. To determine ***Civil Appeal No. 293 of 2019***, the Court of Appeal on the face of things would, in my opinion, have to evaluate the evidence presented by the parties in the trial court, the competence of the Statutory demand and the existence of an undisputed debt amongst others issues. This same question of debt under the Statutory Demand in *Civil Appeal No. 293 of 2019* is rephrased as breach of contract and recovery of payment under ***HCCNo. 0899 of 2022***. The High Court would need to evaluate the evidence in ***HCCS No. 0899 of 2022*** to determine if the Applicant/Defendant is liable to pay the claimed sums.

It was argued for the Respondent that the reliefs sought were different, therefore, the L*is pendens* Rule was not breached.

My view is that whether matters in issue are directly and substantially similar is not only an issue of framing or construction. The Court must also consider the

likely outcome of the matters. A look at the miscellaneous cause out of which the civil appeal arose and HCCS No. 0899 of 2022 shows that what is in contention is whether one of the Parties breached the Contract between them. And if this question is answered in the affirmative, how much money is owed. I have observed that the Respondent tried to go around this in a smart way by making the same claim against the Applicant by filing an ordinary plaint. The same documents (agreement and invoices) relied on in the Statutory Demand were the same used by the Respondent in filing the main suit out of which this Application arises. The difference in amount claimed in the main suit vis-à-vis the amount in the statutory demand arises from the latter not taking into account withholding tax element as already explained above at pages 17 and 18 of this decision. I am of the considered view that when the Respondent failed to successfully claim the alleged demanded sum under insolvency proceedings, it then sought to recover it under ordinary suit in ***Civil Suit No. 0899 of 2022.*** I therefore find that the matters in issue in both ***Civil Suit No. 0899 of 2022*** and ***Civil Appeal No. 293 of 2019*** are directly and substantially similar.

To allow ***HCCS No. 0899 of 2022*** proceed would risk putting the two courts in a position where they could reach differing opinions. This threatens the doctrine of precedent and could lead to an embarrassment.

Secondly, if the High Court for example allowed the orders in ***HCCS No. 899 of 2022*** and the **Court of Appeal** also allowed ***Civil Appeal No. 293 of 2019***, the Respondent would stand to benefit twice.

In the circumstances, it is my considered opinion that ***HCCS No. 0899 of 2022*** offends the *Lis pendens* Rule.

Whether this Application or HCCS No. 0899 of 2022 is an abuse of court process.

It was the submission of the Respondent's Counsel that this Application was an abuse of the court process because the Applicant seeks to plead arbitration, which it failed to honor and the Applicant set out a counter demand which it never sought to recover, to date. Thus, the Applicant is using this Application to avoid litigating the dispute.

For the Applicant, it was submitted that ***HCCS No. 0899 of 2022*** is an abuse of court processes because the Respondent is litigating a matter subject to arbitration and secondly, seeking same money yet it appealed the decision in ***Civil Appeal No. 293 of 2019.***

Abuse of court process is the use of court for improper purposes or a purpose which the process was not established. ***See. Attorney General and another V Mark Kamoga and another SCCA No. 0 of 2004***. The suit must have no basis, is vexatious, and amounts to forum shopping, or using the court processes for improper purposes.

I find that HCCS No. 0899 of 2022 is an abuse of the court process because what the Respondent ultimately wants from the Applicant is the payment of a certain amount of money arising out a contract executed between the Parties. It is this claim that led the Respondent to issue the Statutory Demand which gave rise to the miscellaneous cause that was filed in the High Court (Civil Division). It is also this claim that led to the filing of HCCS No. 0899 of 2022. Secondly, the Respondent filed ***CACA No. 293 of 2019*** and later filed **HCCS *No. 0899 of 2022.*** The Civil Appeal is yet to be heard and determined and some steps have been

taken to prepare the Appeal for hearing. According to the information on the court record, parties were asked to file conferencing notes. This is creating multiplicity of suits. Having found that HCCS No. 0899 of 2022 offends the *Lis pendens* Rule and is an abuse of the court process, the same is hereby struck out under section 98 of the Civil Procedure Act and section 17(2) of the Judicature Act.

Each party shall bear their own costs.

Dated and signed at Kampala this **2nd day of April 2024.**

Harriet Grace MAGALA

Judge

Delivered online (ECCMIS) this **30th day of April 2024.**