

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT FORT PORTAL
MISC. APPLICATION NO. 008 OF 2022
(ARISING FROM CIVIL SUIT NO. 0042 OF 2019)

5 **AGRIEXIM UGANDA LIMITED APPLICANT**

VERSUS

MONDAY CHARLES RESPONDENT

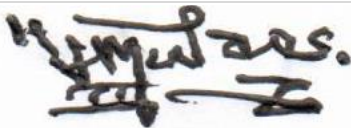
BEFORE: HON. JUSTICE VINCENT WAGONA

RULING

10 The applicant commenced this application under sections 98 and 82 of the Civil Procedure Act and order 52 rules 1,2 and 3 of the Civil Procedure Rules for orders that:

1. The ruling and orders dated 26th April 2022 entered by His Worship Matenga Dawa Francis, the Assistant Registrar in closing Civil Suit No.
15 0042 of 2019 (AGRIEXIM UG. LTD V MONDAY CHARLES) in favour of the Respondent be reviewed and set aside.
2. That the matter be heard and disposed of interparty.
3. That the costs of taking out the application be provided for.

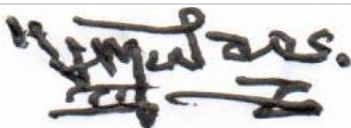
The application was supported by the affidavit of Mr. Baguma Robert Eliphaz, an
20 official recovery agent of the applicant who averred as follows:



1. That the applicant filed Civil Suit No. 42 of 2019 against the Respondent for recovery of Shs 251,248,700/=. That later the parties entered into a consent judgment in which the Respondent agreed to pay Shs 274,498,700/= in final settlement of the claims by the applicant in the suit.
- 5 2. That out of the said sum, the Respondent, paid a sum of Shs 250,365,000/= leaving an unpaid balance of Shs 24,133,700/=.
3. That when the applicant's agent filed an application for execution of the remaining sum on 10th February 2022, he was told that the Assistant Registrar presiding over the matter was not around and was to be in office in
10 May 2022 and made subsequent efforts to follow up the same which did not yield any results.
4. That on the 26th day of April 2022, the judgment debtor appeared before the Assistant Registrar and informed him that he had fully settled the money thus misguiding court to arrive at an erroneous finding to the effect that the
15 Respondent had fully paid the sum due from him.
5. That the sum of Shs 24,133,700/- is still due and owing and that it was in the interests of justice that the application was allowed.

The application was opposed by the Respondent who contended thus;

- 20 1. That the current application was filed by a person who was not a party to the suit from where the same arises. That the suit was filed by **Agriexim Limited** and not the current applicant. The applicant thus has no locus standi thus the application is defective.
2. That Civil Suit No. 042 of 2019 was settled by consent and he paid all the monies agreed upon thus there are no grounds for review.



3. That having paid part of the decretal sum by surrendering his properties on 9th December 2020, he paid Shs 11,370,000/= as part of the decretal sum and Shs 10,000,000/= was paid to a one Baguma Eliphaz who introduced himself to him as a recovery agent of Agriexim and further Shs 1,370,000/=.
- 5 That he further paid Shs 4,300,000/= on 9th December 2020 to the said Baguma who acknowledged receipt of the same.
4. That he also paid Shs 10,000,000/= to Ahabwe James & Co. Advocates as costs which were included in the consent. That after paying the advocates costs he remained indebted to the plaintiff to the tune of Shs 9,833,700
- 10 which was equally paid to the said Baguma Eliphaz. That as such he is not indebted to Agriexim limited and the applicant in the current application is alien to the previous proceedings.
5. That the application does not meet the test for grant of the reliefs sought thus it was in the interests of justice that it was dismissed with costs.

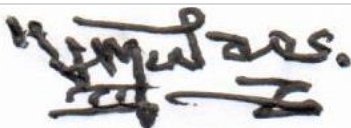
15 ***Representation and Hearing:***

Mr. Kisembo of M/s Kisembo DB & Co. Advocates appeared for the applicant while Mr. Luleti Robert of ***M/s Mugabe – Luleti & Co. Advocates*** appeared for the Respondent. Both counsel addressed me by way of written submissions which is have considered herein.

20 ***Issues:***

The following are the pertinent issues raised by the pleadings thus;

- 1. Whether the applicant has locus to present the application at hand.**
- 2. Whether this is a proper application for review.**



3. Whether the applicant has demonstrated sufficient cause warranting grant of review orders.

4. What remedies are available to the parties?

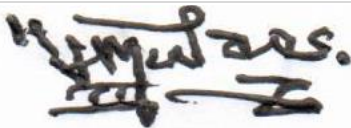
Resolution:

5 I will begin with the first issue. Mr. Luleti for the Respondent raised a point of law which I have found relevant to dispose of first before delving into the merits of the application. He contended that the current applicant “**AGRIEXIM UGANDA LIMITED**” is unknown to court. That Civil Suit No. 42 of 2019 from where the current application allegedly arises was filed by ‘**AGRI EXIM LIMITED**’ who in
10 law is different from the applicant.

He invited me to the case of *Waswa v Moulders (U) Ltd, HCMA No. 685 of 2017* where court held that **Moulders limited** was not taken to be **Moulders Uganda Limited**. He also referred me to the case of *FortHall Bakery Supply Co. V Fredrick Mugai Wago (1959) E.A 474* where court held that a suit in the names
15 of a wrong plaintiff in a nullity. Premised on the said authorities, he contended that the applicant in the current suit is a wrong party and has no locus to present the case at hand. He asked court to strike out the application with costs.

Decision:

A suit in the names of a wrong plaintiff in a nullity. In *Abdulrahman Elamin v Dhabhi Group & 2 others, C.A.C.A No. 215 of 2015*, the Court of Appeal adopted the dicta in the Kenyan case of *The Fort Hall Bakery Supply Co. v Fredrick Mugai Wago [1959]1 E.A 474* where it was stated that: “*The law is now settled, a suit in the names of a wrong plaintiff or defendant cannot be cured by amendment.*”
20

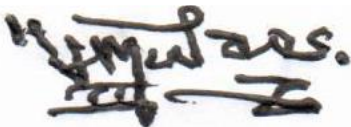


In *Abdulrahman Elamin (supra)* court further gave a persuasive observation thus:
“Put differently, one who is not a party to a contract save for certain exceptional circumstances of which this case is not one, cannot sue or be sued for breach of contract. See: Kayanja v New India Assurance Co. Ltd [1968] E.A 295.”

5 In the present application, the main suit from where this application arises was filed by ‘AGRI EXIM LIMITED’ who in law is different from ‘AGRIEXIM UGANDA LIMITED’. No evidence has been placed before me either to confirm that AGRI EXIM LIMITED changed name to ‘AGRIEXIM UGANDA LIMITED’ to cloth the applicant with locus to maintain the application at hand. No evidence
10 has been placed before me to prove any dealings between AGRIEXIM UGANDA LIMITED and the Respondent. The applicant as such cannot purport to enforce an agreement of which they were not a party.

I therefore agree with learned counsel Mr. Luleti for the Respondent that the current applicant “***AGRIEXIM UGANDA LIMITED***” is unknown to court. That
15 Civil Suit No. 42 of 2019 from where the current application arises was filed by ‘***AGRI EXIM LIMITED***’ who in law is different from the applicant.

I therefore strike out the same with no orders as to costs since it is unknown whether the applicant exists or is none-existent. I so order.



20 Vincent Wagona

High Court Judge / Fort-portal

DATE: 22/03/2024

