THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

CIVIL DIVISION

MISCELLANEOUS APPLICATION NO. 0169 OF 2013

(Arising from H.C.C.S NO. 207 OF 1993 & MA No. 192 of 2000)

1. KATARIKAWE MANUEL
2. TUMWINE FRED
3. KATURA ONESMUS
4. NTWIRENABO NYANSIO
5. HAPPY GODFREY
6. TABARO SALIVAN
7. BYAMUGISHA DAMAZO
8. KATEIGUTA YAFESI
9. KATARIKAWE GIRIGORI

:::::::::: APPLICANTS

VERSUS

BENON TURYAMUREEBA RURANGA :::::::::::::::: RESPONDENTS

BEFORE: HON. MR. JUSTICE STEPHEN MUSOTA

RULING:

The nine applicants represented by M/S Mushabe, Manungu & Co. Advocates filed this application by way of Chamber Summons under O. 20 rr 1 & 2 of the Civil Procedure Rules and S. 98 of the Civil Procedure Act for orders that:

(a) An order for an account doth issue against the respondent.

(b) Costs of the suit be provided for.

The grounds of application are that:

1. The respondent, Benon Turyamureeba Ruranga represented by M/s Owen Murangira & Co. Advocates has collected accumulative sum of UGX.17,133,946,000/= on applicants' behalf from the Attorney General.

2. Despite numerous demands the respondent has ignored, refused and/or failed to account for the applicants' monies so far received from the Attorney General of the Republic of Uganda.

3. The respondent is about to receive a balance of the decretal sum from the Attorney General.

4. The respondent does not have any known assets and whatever assets the respondent may have may not be sufficient to compensate the applicants for the apparent misappropriation.

5. It is fair and in the interest of justice that the respondent be ordered to account for the monies so far received from collecting further monies from the Attorney General on the applicants' behalf.

In his affidavit in reply, the respondent opposed the application and revealed that he will raise preliminary points of law that the application under consideration is untenable in law, misconceived, incompetent, barred by law and an abuse of court process and the same should be struck out and dismissed with costs.

In his submission in support of the above averments, Mr. Murangira learned counsel for the respondent pointed out that:

(1) The application under consideration is misconceived and incompetent as presented for it is brought under O. 20 rr 1 and 2 of the Civil Procedure Rules which order presupposes there is a plaint in which the plaintiff is praying for an account. That without a plaint, then the instant application offends the first requirement since there is no suit between parties hereto.

Learned counsel relied on the case of **National Bank of Kenya Ltd Vs Pipe Plastic Samkolit (K) Ltd & another [2002] 2 EA 495** to fortify his argument. He also relied on the case of **Bhatia Vs Crane Bank Ltd HCMA No. 459 of 2002.**

The second preliminary point raised by learned counsel for the respondent concerns Limitation. He submitted that the instant application is barred by time under S. 3 (2) of the Limitation Act Cap. 80 since the applicants in their affidavits state that the respondent formed a company in 2004 to collect and misappropriate their money. That six years from 2004 is 2010. That since this application was filed

in 2013 on 17th April, it was outside the limitation time. That on that basis the same be dismissed for being out of time.

In reply, Mr. Mushabe learned counsel for the applicants contended that O. 20 of the Civil Procedure Rules provides for application for an account. It covers anybody who is aggrieved and seeks to have an account. That the application involves court's inherent powers under S. 98 of the Civil Procedure Act. That if S. 98 of the Civil Procedure Act is read together with Article 126(2)(e) of the Constitution, the objection by learned counsel for the respondent amounts to a technicality which seeks to shield the respondent from the duty to account. Further that such applications like the instant have been viewed as suits and in any case Miscellaneous Causes amount to Civil Suits.

Regarding limitation, Mr. Mushabe contended that learned counsel for the respondent has read it out of context. That limitation does not apply to a continuous business tort where the respondent continues to draw money from the Attorney General. That the preliminary objections be overruled.

O. 20 r 1 of the Civil Procedure Rules provides that:

> *"1. Order for accounts*
>
> ***Where a plaint prays for an account, or where the relief sought in a plaint involves the taking of an***

account, then if the defendant either fails to appear or does not after appearance, by affidavit or otherwise satisfy the court that there is some preliminary question to be tried, an order for proper accounts, with all necessary inquiries and directions usual in similar cases shall immediately be made ----------”.

(2) The application may be made at any time after the time for entering an appearance has expired”.

From the clear wording of the provisions of O. 20 of the Civil Procedure Rules, I am in agreement with the submission by Mr. Murangira learned counsel for the respondent that for an application for account to be tenable, it must arise from a suit on plaint. An application to account presupposes there is a plaint in which the plaintiff is praying for an account. Without a plaint the application under consideration offends this legal requirement since there is no pending suit between the parties hereto.

It was held in the case of **National Bank of Kenya Ltd Vs Pipeplastig Samkolit (K) Ltd & another [2002]2 EA 495,** *inter alia* that:

“ The High Court had no jurisdiction to entertain arguments on taking of accounts when no such prayer was made in the plaint----------.”

In that case, none of the reliefs sought in the plaint included the taking of accounts. The plaintiffs filed a suit against the defendants in the High Court for reliefs, *inter alia* for a declaration that the 1st plaintiff had a right to redeem the charge registered against the 2nd plaintiff's property, simultaneously with the plaint. The plaintiffs filed a Chamber Summons for an injunction to restrain the defendant from selling the property and for an order for the defendant to furnish a true statement of the payments received and balance outstanding.

Clearly, this court cannot entertain an interlocutory application like the instant one for taking of accounts when there was no basis for the same in the suit.

O. 20 r 1 of the Civil Procedure Rules provides that if a plaint prays for an account or where the relief sought or the plaint involves taking of an account an order for proper accounts with all necessary inquiries and directions usual in similar cases shall be made.

This position of the law was reaffirmed in **Miscellaneous Application No. 459 of 2002, Bhatia Vs Crane Bank Limited** (per Opio Aweri J as he then was).

Regarding the objection that the instant application is brought out of time, S. 3 of Limitation Act Cap. 80 provides *inter alia* that:

"3(1) The following actions shall not be brought after the expiration of six years from the date on which the cause of action arose:

(a) actions founded on contract or tort.

(b) ----------

(c) actions to enforce an award.

(d) ----------."

Since the applicants in their respective affidavits state that they by way of a test suit constituting 133 plaintiffs sued both ***Kabarole District Local Council and the Attorney General vide HCCS No. 207 of 1993*** through M/S Nyanzi Kiboneka & Mbabazi Advocates and in the year 2000 gave the respondent powers of Attorney to represent them in the suit and they indeed won this case and each plaintiff was awarded 12 million shillings plus interest at 6% from April 1993 till payment in full yet the respondent formed a fictitious group of claimants called Mpokya Evictees Compensation Court Awarded Beneficiaries Association (MECCABDA) which he used to collect and misappropriate money meant for BUSEREDA, I agree with Mr. Murangira, that since this application was filed on 17th April 2013, it was filed outside the limitation time. From 2004, six years would fall in 2010.

In their pleadings none of the applicants revealed when they came to know that their money was being misappropriated. The only indicator of time can be found in the applicants' respective affidavits and that is 2004 when they came to know that a fictitious group of claimants (MECCABDA) was formed. Another indicator of time is when they allegedly won the case in April 1993.

Consequently, I will uphold the two preliminary objections raised by learned counsel for the respondents and strike out this application with costs.

Since I have found no basis for filing this application for failure to comply with the requirements of O. 20 r 1 of the Civil Procedure Rules, I have found it not necessary to consider the counter objections by Mr. Mushabe for the applicants because they no longer have a foundation.

Stephen Musota
J U D G E
27.08.2014.