THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT NAKAWA

MISC. APPLICATION NO. 231/2014

ARISING FROM MISCELLANEOUS CAUSE NO. 17 OF 2014

NSHIMYE ALLAN PAUL MBABAZI ::::::::::APPLICANT/JUDGMENT CREDITOR

t/d NSHIMYE & CO. ADVOCATES

VERSUS

MICROCARE INSURANCE LIMITED &

INSURANCE REGULATORY AUTHORITY :::::::::::::::: GARNISHEE

RULING

When this Application came up for hearing in respect of a Garnishee Order being made Absolute, Mr. Albert Byamugisha for the Garnishee raised a preliminary objection to the effect that Miscellaneous Cause No. 14 of 2014 was not dated and sealed by the Registrar of the Court.

And that the Consent Judgment and Decree which arose there from was a nullity. He referred to the case of **Hussein Badda Vs Iganga District Land Board and Others, HCCV-MA-0479-2011.**

He prayed that the consent Judgment and Decree are a nullity and consequently the Application for a Garnishee Order being made absolute cannot stand. In reply, Mr. Robert Kirunda for the Applicant submitted that the case of Hussein Badda relied on by Mr. Albert Byamugisha was distinguishable in that it related to service of summons requiring the Respondent to attend Court. Mr. Kirunda added that Order 5 Rule 1(5) of the Civil Procedure Rules is not applicable in matters where parties record a consent Judgment. He added that the essence of nullifying proceedings as was held in Hussein Badda case was that the Defendant or Respondent was not properly served and notified or that he did not have the opportunity to appear and answer the

claim. Counsel for the Respondent added that a consent Judgment by the parties can be endorsed or recorded by Court even though summons have not yet been issued by the Court under O.5 Rule 1(5) of the Civil Procedure Rules, which is to order the Defendant to file a defence within a specified time.

He added that consent Judgments are governed or provided for under O.50 r 2 of the Civil Procedure Rules and referred this Court to the case of **Ismael Hirani Vs Kassam [1952] E.A. 131.** He emphasized that a consent Judgment can be recorded any time irrespective of the timelines of the Court proceedings. Mr. Kirunda further submitted that any error, mistake or omission attributed to Court should not be visited on the litigant who has no control whatsoever over proceedings relating to the action required on the pleadings in respect of Orders 5 Rule 1 (5) of the Civil Procedure Rules.

Mr. Albert Byamugisha in reply insisted that the Applicant cannot execute an invalid consent Judgment and that the Garnishee Order Nisi should be set aside.

I have carefully considered the submissions by both sides and read the cases quoted. I find the case of **British American Tobacco (U) Ltd Vs Sedrack Mwijakubi, Supreme Court Civil Appeal No. 1 of 2012** very instructive and pertinent. It was held that where parties agree to settle the matter by consent before Court has issued summons, the recorded **consent Judgment cannot be a nullity** because a consent Judgment is a Judgment of the parties validated by Court under O.50 rule 2 of the Civil Procedure Rules and Order 25 Rule 6 of the Civil Procedure Rules.

In another Supreme Court case of **Stephen Kasozi & Others Vs Peoples Transport Services, Civil Appeal No. 27 of 1993,** it was held that in instances where parties elect to settle a matter by consent, the duty of the Court is to recognize and take recognition of the compromise and consent. I therefore do hereby reject Mr. Albert Byamugisha's submissions that the consent Judgment in this case is invalid and that the Garnishee Order Nisi should be set aside. The case of **Hussein Badda** which Mr. Albert Byamugisha relies on is distinguishable as it sought to address a completely different mischief. My Senior brother Judge V. Zehurikize as he then was, sought to address the challenge of Courts being treated to an unnecessary multiplicity of proceedings partly arising from Applications for interim orders being brought as a matter of course and not necessity. He also sought to deal with the practice of Applications for interim

Orders being hurriedly fixed, heard and disposed of in the absence of compliance with the rules that regularize the filing of a case.

And the learned Judge was addressing instances of matters that involve or anticipate hearing of the matter and the leading of evidence, but not the kind of instances that anticipate the filing of a consent Judgment as was done in the present case. In the present case, the consent Judgment was recorded by the parties before a Judge and all the requisite fees, signature and stamp were properly paid and affixed.

The Respondent's presence before the Judge to confirm the contents of the said consent Judgment was an indication that the intentions of O.5 Rule 1(5) of the Civil Procedure Rules were met. In consent Judgments of this nature, the Court has assisted and facilitated parties to meet the ends of Justice. It would therefore be unfair and cause injustice to nullify the consent Judgment properly concluded in such circumstances. Even then, the Court of Appeal in **Wanume David Kitamirike Vs Uganda Revenue Authority Court of Appeal Civil Appeal No. 138 of 2010** held that the absence of a Court seal on a court document was a mere irregularity which cannot be fatal.

I also hasten to warn Advocates who keep on clinging to technicalities at the detriment of substantive Justice as in the Advent of Article 126 (2) (e) of the Constitution. once a person has conceded owing the money demanded by the opposite party, why should a third person hang Or cling on technicalities to allegedly set aside a consent Judgment signed by the Managing Director of Microcare Insurance Limited, an adult of sound mind?

The Courts under the current era will not allow such flimsy technicalities to deny Justice to a deserving Applicant.

In any case, the law is now settled that a third party cannot set aside a consent Judgment either by appeal or motion. That was the holding of the Supreme Court in **Ladak Abdallah Vs Griffin Isingoma, SCCA No. 8 of 1995** and followed by Justice Okumu Wengi as he then was in **Pavement Civil Works Ltd Vs Andrew Kirungi, Misc. Application No. 292 of 2002.**

He held:-

> **"I am aware that a consent Judgment and decree cannot be set aside by appeal or by motion. For setting aside such a decree there are two available modes of procedure (a) by a suit, (b) by an Application for a review of the Judgment sought to be set aside. But the more appropriate mode is by an Application for review. A decree on compromise is passed between the two persons who were present before the Court…."**

Mr. Albert Byamugisha for the Garnishee, a third party can therefore challenge the consent Judgment and Decree either by a suit or an Application for review and not by way of oral Application under the guise of a preliminary objection. I accordingly do hereby dismiss the preliminary objection. Costs in the cause.

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W. M. MUSENE

JUDGE

16/05/2014

Mr. Robert Kirunda for Applicant present.

Counsel for Respondent absent.

Aida Mayobo, Court Clerk present.

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W. M. MUSENE

JUDGE

Court: Ruling read out in open Court.

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W. M. MUSENE

JUDGE

Mr. Byamugisha:

We apply to file written submissions.

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W. M. MUSENE

JUDGE

Court: Counsel for Applicant given one week up to 23/05/2014 to file written submissions. Counsel for Respondent given one week up to 30/05/2014 to file a reply. Rejoinder by 4/06/2014

Ruling on 6/06/2014 at 2:30 p.m.

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W. M. MUSENE

JUDGE