

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KABALE
MISCELLANEOUS APPLICATION NO.087 OF 2016
(Arising from Civil Suit No.304/2012)

TUMUSIIME PROSPER

APPLICANT

VERSUS

RUBANDA KYIIZI SACCO LTD

RESPONDENT

BEFORE HON.JUSTICE MOSES KAZIBWE KAWUMI

RULING

This Application is brought under Sections 83(a),(c) and 98 of the Civil Procedure Act. The Applicant seeks orders that the judgment/Award delivered by the Arbitrator and the Orders arising there from be set aside, and the Applicant is released from civil prison.

The grounds for the Application are :

1. That the Arbitrator exercised a jurisdiction not vested in him in Law
2. That even if the Arbitrator had the jurisdiction,(sic) he acted illegally or with material irregularity and injustice
3. That the judgment Award or Award passed lacks a lot of(sic) essential elements of a judgment
4. That the Applicant was never served with the Tribunal's pleadings and copy of the award itself
5. The Applicant has lost income and has been mentally anguished as a result of the illegal civil sentence served
6. The amount of money being demanded is exaggerated
7. It is just and equitable that this application is granted.

The Application is supported by an Affidavit sworn by the Applicant which on the whole regurgitates the grounds stated above. In the Affidavit the Applicant further avers that on the 12th October 2011, he borrowed Shillings 4,000,000/= from the Respondent for a period of 12

months at an interest rate of 2% per month and he paid back the principal sum and interest through the Respondent Manager who however did not remit the money to the Respondent. The Applicant claims that he then started paying afresh but on the 9th November 2012 the Respondent lodged a summary suit for the Principal sum but the suit was dismissed for want of jurisdiction.

The Applicant claims he had paid Shillings 2,414,600/= and what he owed the Respondent was Shillings 1,585,400/= but the Respondent's Manager claimed in an Affidavit in Reply that only Shillings 1,566,905/= had been paid and 2,433,095/- was unpaid. The Applicant claims he is a member of the Respondent SACCO but never participated in the appointment of the Arbitrator who passed the Award of 10,536,129/- which is now demanded. The Applicant further faults the Learned Chief Magistrate and the Arbitrator for failing to detect that the alleged Affidavits in proof of service on him were false.

The Respondent's Manager swore an Affidavit in reply denying having received any money from the Applicant and that by the 30th April 2015, the Applicant was indebted to the tune of Shillings 9,986,129/=. The Applicant was served with demand notices which he ignored prompting the Respondent to appoint an Arbitrator in a General meeting but still the Applicant refused to comply to the summons served on him to attend the Arbitration proceedings. It is further averred in the Affidavit that the Applicant refused to agree to a settlement before the Learned Chief Magistrate and that the option the Applicant had in Law was to Appeal to the Uganda Cooperative Alliance which he did not do.

On the 2nd November 2016, this file was placed before me for hearing. Counsel who appeared for the Respondent had not studied the Application since his Partner has personal conduct of the case. He had an Affidavit in reply to file and serve on Counsel for the Applicant which he had not done. I ordered that the Applicant be released from Civil Prison on depositing 5,000,000/= with the Respondent as Counsel complete filing and service of Affidavits and submissions in support of their client's positions.

Section 83 (a) and (c) of the Civil Procedure Act provides for the revision of proceedings determined by Magistrates Courts to determine whether the Court exercised jurisdiction not vested in it in Law or if the Court had jurisdiction, it was exercised illegally or with material irregularity and injustice. The provisions are concerned with the exercise of jurisdiction of Magistrates and to that extent this Court is not vested with jurisdiction to inquire into the misuse of the jurisdiction of an Arbitrator appointed under Section 73 of the Cooperatives

Societies Act, Cap. 112. Grounds 1 to 4 of the Application are therefore not within the mandate of this Court by way of revision.

Section 73(2) of the Cooperative Societies Act refers to any debt claim between any society and a member as a dispute subject to Arbitration. The Applicant in the instant Application admits to being a member of the Respondent who not only has shares but also took a loan which is the subject of this dispute. There are several Affidavits of Service and Notice of Claims served on the Applicant which he would receive but decline to append his signature. I am not convinced that these are false Affidavits sworn by a Court Process server.

Section 73(9) of the Act provides that Appeals against Arbitral awards are made to the Board within sixty days and Section 73(14) of the same Act specifically provides that an Award not appealed or set aside within the time stipulated in Section 73(9) shall be final and cannot be subjected to question under any Court but shall be enforced as a judgment of that Court.

The Arbitral award in this case was made on the 15th January 2016 as indicated in the annexure to the Respondent's Affidavit in Reply. The Respondent filed the Award in the Chief Magistrates Court for enforcement of the claim in accordance with Section 73(14). The Applicant was issued with Notice to Show Cause Why Execution Should Not Issue on the 5th July 2016 and he duly acknowledge receipt. The Notice indicates that the claim arises from an Arbitral Tribunal. The Applicant on receiving the Notice did not take the requisite steps to set aside the Award under the provisions of Section 73 of the Cooperative Societies Act.

The Chief Magistrate did not have jurisdiction to inquire into matters raised by the Applicant regarding the conduct of the Arbitration proceedings. This was a preserve of the Board on Appeal as stipulated in the Cooperative Societies Act.

In view of the above analysis, I do not fault the Chief Magistrate for exercising jurisdiction not vested in him or for illegally and with material irregularity and injustice exercising his jurisdiction. There is on record proof of service of the Arbitral Award on the Applicant together with a Notice to Show Cause why execution should not issue. The Applicant appeared in Court and was sent to Civil Prison within the execution provisions of the Civil Procedure Rules.

I accordingly dismiss the Application and make the following Orders;

- a) The Applicant pays the balance of Shs.5,536,129/= in fulfillment of the total claim in the Arbitral Award.
- b) The payment in (a) above must be made within 10 days from the date this Ruling is delivered by the Deputy Registrar, Kabale High Court failure of which the Respondent shall be at liberty to continue with execution proceedings.
- c) The Respondent is awarded costs of this Application.

Moses Kazibwe Kawumi

Judge

9th December 2016.