

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA
CIVIL DIVISION
HIGH COURT CIVIL SUIT NO. 49 OF 2014

- 1. DISON OKUMU**
- 2. EDWARD UDHEK RUBANGA**
- 3. JOSEPH HENRY NDAWULA**
- 4. JAMES NATALA**
- 5. STEPHEN MUKASA**
- 6. FREDRICK JOHN MUBIRU**
- 7. JOSEPH MUTATIINA**
- 8. OYELLA ROSE EVE OPIRO**
- 9. MARY WACHA**
- 10. STEPHEN EPILU**



::::::: PLAINTIFFS

Versus

- 1. UGANDA ELECTRICITY TRANSMISSION COMPANY LIMITED]**
- 2. UGANDA ELECTRICITY DISTRIBUTION COMPANY LIMITED]**
- 3. UGANDA ELECTRICITY BOARD (IN LIQUIDATION)]**
- 4. ALEX BASHASHA T/A BASHASHA & CO. ADVOCATES]**
- 5. PAUL NYAMARERE** **:::::::::::::::::: DEFENDANTS**
- 6. HENRY KYAMBADDE]**
- 7. JOHN WALUGO]**
- 8. JOSEPHINE NAKFEERO]**

BEFORE: HON. MR. JUSTICE STEPHEN MUSOTA

RULING

This is a ruling on preliminary points of law raised by the respective learned counsel for the defendants in a suit brought by plaintiff. The preliminary objection is that the head suit is incompetent, untenable

and improperly before court in as far as the plaintiffs have no *locus standi* to bring the suit and this court is not the right forum. That the procedure adopted is also wrong. The other objection is that this suit is *res judicata* because all issues were resolved in the earlier suit.

Learned counsel for the 1st and 3rd defendant also raised an objection that the suit is incompetent for failure to join the Attorney General and other beneficiaries of the Compromise/judgment on admission as parties to the suit.

At the hearing Mr. Ebert Byenkya appeared for the plaintiffs, Ferdinand Musimenta appeared for the 1st and 3rd defendant, Geoffrey Madete (SA) appeared for the 2nd defendant, Mpumwire Abraham appeared for the 4th defendant and was holding a brief for Didas Nkurunziza, Lawrence Tumwesigye appeared for the 5th, 6th and 8th defendant.

The brief background to this case is that the 4th to the 8th defendants filed a suit in this court for recovery of unpaid arrears for themselves and on behalf of 1500 other former employees of the 1st and 3rd defendants. They successfully completed the case and several other cases in a Compromise which settled all claims in all suits which had been filed. The plaintiffs were aggrieved by the consent orders and that is why they filed the instant suit. The defendant objected to the plaint and promised to raise preliminary points of law which this court is dealing with in this ruling.

The following issues arise from the preliminary points of law:

1. Whether the suit is incompetent for failure to join the Attorney General and other beneficiaries of the Compromise/judgment on admission as parties to the suit.
2. Whether the suit is brought before a right forum.
3. Whether the plaintiffs brought this matter through the right procedure.
4. Whether the plaintiffs have locus to bring this suit.
5. Whether the plaintiffs' claim is *res judicata*

I have considered the preliminary objections raised in relation to this suit. I have also considered the pleadings and submissions by respective counsel as well as the law applicable. I will go ahead and resolve the issues as listed above.

1. Whether this suit is incompetent for failure to join the Attorney General and other beneficiaries of the Compromise/judgment on admission as parties to the suit?

On this issue, learned counsel for the 1st and 3rd defendant submitted that under paragraph 5 of the plaint and in the prayers sought in the plaint the plaintiffs seek to set aside the Compromise dated 31st may 2015 which is annex C and the judgment on admission which is annex A of the plaint. That the Attorney General was a party to the Compromise and judgment that are being impugned in this suit. The Attorney General was the 4th respondent in MA 234 of 2012 under which the said judgment was issued and the consolidated suits. Further that that under clause 3 of the Compromise the Attorney General agreed to settle all liabilities arising out of the consolidated suits and

judgment on admission on behalf of the 1st and 3rd defendants on the terms set out in the Compromise. That the 1st and 3rd defendants expected the Compromise on the strength of government's undertaking to settle liability arising thereunder on the said defendant's behalf and on the terms of the Compromise.

Learned counsel further submitted that the Compromise was executed by the 5th to 8th defendants on their own behalf and on behalf of the 1500 former employees of UEB in liquidation as per clause 1 of the Compromise. Further learned counsel for the 1st and 3rd defendant submitted that payments have been effected to the plaintiffs and the said beneficiaries on the terms of the said compromise. However in this suit the 5th to 8th defendants are not suing in their representative capacity but individually. Further, learned counsel submitted that if the orders sought in the plaint are granted the rights of 1500 beneficiaries who are not parties to this suit will be affected. That the suit is therefore incompetent and should be struck out with costs to the 1st and 3rd defendants.

In reply, learned counsel for the plaintiffs submitted that the 1st and 3rd defendant have no *locus standi* to raise the objection because the Attorney General has exclusive legal mandate to act in any legal proceedings for himself and for the government of Uganda even on preliminary objections. That to allow the 1st and 3rd defendants to pursue this objection will be a clear violation of S 10 of the Government Proceedings Act.

Regarding the issue of the 1500 other former employees, learned counsel submitted that the 1st and 3rd defendants do not represent them and so have no right to raise this objection on behalf of the 1500 former employees. That the mere omission to add a party does not render a suit incompetent. He relied on O. 1 r 9 of the Civil Procedure Rules which provides that no suit shall be defeated by reason of misjoinder or non-joinder of parties and O. 1 r 6 of the Civil Procedure Rules for the submission that the plaintiff is free to choose who to sue.

Learned counsel also explained that the reason why they left out the Attorney General is because he was never liable or sued and that there was no instruction whatsoever to sue the Attorney General by the 1500 others. He also submitted that the court is merely being asked to speculate. In the alternative learned counsel submitted that if this court finds merit in this objection the solution is not to strike out the plaint but rather to order a party to be added. For this reasoning learned counsel relied on O. 1 r 10(2) of the Civil Procedure Rules.

After careful consideration of the background and facts of this suit, I am in agreement with the submissions by learned counsel for the defendants that this suit is incompetent for failure to join the Attorney General and the other beneficiaries of the Compromise/judgment on admission as parties to the suit. It is important to note that under paragraph 5 of the plaint and in the prayers sought thereunder the plaintiffs seek orders to set aside the compromise dated 31st May 2013 (annex C of the plaint) and the judgment on admission (annex A of the plaint) entered by this court on 13th July 2012. The Attorney General was a party to the compromise and the judgment that are being

challenged in the suit. The Attorney General was the 4th respondent in MA No. 234 of 2012 under which the said judgment was issued. Likewise the Attorney General was the 4th defendant in the consolidated suit under which the compromise was entered and the compromise was drawn and signed *inter alia* by the Attorney General.

It is on record that under clause 3 of the compromise, the Government of Uganda represented by the Attorney General agrees to settle all liabilities arising out of the consolidated suits and judgment on admission on behalf of the 1st, 2nd and 3rd defendants on the terms set out in the compromise, which included payment of outstanding terminal benefits by Government in installments with the involvement of the Auditor General in ascertaining the amounts due to the beneficiaries of the compromise, the segregation of liability between the successor companies of UEB, the payment of lumpsum in lieu of months pension, the payment of the decretal amounts through the 3rd defendant, the procedure of payment by Government of the terminal benefits and costs of the suit.

The compromise I have referred to was executed by the 1st and 3rd defendants on strength of Government's undertaking to settle all liability arising thereunder on the said defendants' behalf and on the terms stated in the compromise. The said compromise was executed by the 5th to 8th defendants on their own behalf and on behalf of over 1500 former employees of UEB as per clause 1 of the compromise. Because of this background, partial payments have been effected to the plaintiffs and the beneficiaries.

From the pleadings, it is apparent that the 5th to the 8th defendants were sued in their individual capacities not as representatives of the other beneficiaries of the compromise/judgment on admission (see para 4 of the plaint). They are referred to as “Purported representatives” and are sued for allegedly acting outside the scope of the representative order.

I therefore agree that if the orders sought in the plaint are granted and the compromise/judgment on admission is set aside, the rights of over 1500 beneficiaries who are not parties to the suit will be affected. In the same vain, the rights of the Government which undertook to bear the liability to pay the said pension and other terminal benefits on the 1st and 3rd defendants’ behalf as per the compromise/judgment will be adversely affected given that the over 1500 beneficiaries and Government are not parties to the suit. The two will be condemned unheard in a matter which affects their rights.

Alternatively if this court made any orders sought in the plaint such orders would not affect the Attorney General implying that the Decree would remain enforceable against him. It is my finding therefore that this suit is incompetent for failure to join the Attorney General and the other beneficiaries of the compromise/judgment on admission as parties to the suit.

2. Whether the suit is Res-judicata.

Learned counsel for the defendants submitted that the plaintiffs in paragraph 5 seek to exclude the payment of plaintiff’s terminal

benefits after deducting the lawyers' fees which was the very subject in MA 234 of 2012 which was deliberated upon and determined by court and as such making the issue in this suit res judicata and untenable.

Learned counsel further submitted that the issue of the lawyers' fees was resolved in HCMA 272 of 2013 in annex E & F to the plaint which was an application which was filed by the 4th defendant against the 5th, 6th, 7th and 8th defendants to determine legal fees payable for prosecution of HCCS of 2008 as consolidated.

Subsequently, Baligobye Jamada one of the beneficiaries under HCCS 138 of 2008 filed a similar application vide HCMA 290/2013 to determine the legal fees payable to the 4th defendant. The same was heard and dismissed. That the 2nd plaintiff also brought another application vide HCMC 289 of 2013 to determine the same issue of payment of legal fees to the 4th defendant which was dismissed.

According to defendants it is clear that the plaintiffs who were beneficiaries under the Decree in HCCS 138 of 2008 have made it a habit to bring frivolous matters in court over the same issues which is an abuse of court process.

The defendants' counsel further submitted relying on S. 7 of the Civil Procedure Act and the case of **National Council for Higher Education Vs Anifa Kawooya Bangirana Constitutional Petition No. 4 of 2011** that court should not entertain a matter which has

already been decided by a court of competent jurisdiction. That this suit be declared re judicata and be dismissed.

In reply, learned counsel for the plaintiffs submitted that the plaint is not challenging the judgment on admission which was varied by the compromise.

Under S. 7 of the Civil Procedure Act, it is provided that no court shall try any suit or issue in which the matter directly or substantially in issue has been directly and substantially in issue in a former suit between the parties under whom they or any of them claim in a competent court to try a subsequent suit in which the issue has been subsequently raised and has been heard and finally decided by that court.

The case of **National Council for Higher Education Vs Anifa Kawooya Bangirana** (supra) echoed the provisions of S. 7 of the Civil Procedure Act. In the decision by Tsekooko JSC (then) while relying on the case of **Mashukar & Another Vs Attorney General & Another SCCA 20 of 2002** he states thus:

“The provision indicates that the following broad minimum conditions have to be satisfied;

- 1. There has to be a former suit or issues decided by a competent court.***
- 2. The matter in dispute in the former suit between the parties must be directly or substantially in dispute between the parties in the suit where the doctrine is pleaded as a bar.***

3. Parties in the former suit should be the same parties under whom they or any of them claim, litigating under the same title.”

Once a decision has been given by a court of competent jurisdiction between two persons over the same subject matter, neither of the parties would be allowed to re-litigate the issue again or to deny that a decision had in fact been given, subject to certain conditions: **Karia & Another Vs Attorney General [2005]1 EA 83, 94.**

With the above legal position in mind, I am in agreement with learned counsel for the defendants that the claim as indicated in the plaint concerns payment of the plaintiffs’ terminal benefits after deducting the Lawyers’ fees and it to be paid. These issues have been substantially heard and determined by this court. By the plaintiffs who have the same claim as those who litigated before bringing this suit on similar facts, offended the doctrine of res judicata. Accordingly I will find that this suit is as well res judicata and should be dismissed.

3. Whether the plaintiffs have locus standi to bring this suit?

On this issue learned counsel for the defendants submitted that it is an agreed fact in the joint scheduling memorandum paragraph 2 that the 5th, 6th, 7th and 8th defendants filed representative suits on behalf of the former employees of Uganda Electricity Board, the 3rd defendant. The former employees’ contracts of employment had been transferred to the 2nd defendant. That the representative suit filed by 5th, 6th, 7th and 8th defendants benefited the plaintiffs in this case.

They further submitted that it is also an agreed fact in paragraph 5 of the joint scheduling memorandum that by consent of the parties to the said Civil suits, the Attorney General and the 1st, 2nd and 3rd defendants on the one hand and 5th, 6th, 7th and 8th defendants on the other hand agreed and entered a compromise in court for a settlement of the claims under HCCS No. 967 of 2005 & 760 of 2006 and a decree was issued by this court. Further that the 5th, 6th, 7th and 8th defendants also entered a consent on behalf of the plaintiffs for professional fees to the 4th defendant for work carried out in prosecution of the suits. That it is clear that the suits were brought in a representative capacity for the benefit of the plaintiffs and others as per annexures A₁, A₂, & A₃ to the plaint. That therefore the 5th, 6th, 7th and 8th defendants are authorized representatives of the plaintiffs and therefore the plaintiffs having recognized the 5th, 6th, 7th and 8th defendants as their representatives are bound by their actions. That therefore the plaintiffs have no *locus standi* to challenge or contest the compromise and consent orders entered on their behalf. Learned counsel relied on the provisions of O. 1 r 8(2) of the Civil Procedure Rules and the case of **Jasper Mayeku & 198 others Vs Attorney General & others HCMA 618 of 2014** and **Bako Abilla Catherine & 21 others Vs Attorney General & KCCA MA 628 of 2009.**

In reply, learned counsel for the plaintiffs submitted that **Mayeku case** (supra) is distinguishable for the present case because in **Mayeku case** the claim was by way of an ordinary application and evidence was adduced by way of affidavit and so the court made the decision after being furnished with all the necessary evidence. That however in the current case the claim is by way of plaint and therefore the

evidence is yet to be adduced. Learned counsel also submitted that this court in making the decision in the Mayeku case relied on the fact that there was not sufficient evidence to prove that the consent order sought to be challenged had been entered into by consent.

Relying on the authority of **Shell (U) Ltd & 9 others Vs Muwema Mugerwa & Co. Advocates & another SCCA 2 of 2013**, learned counsel for the plaintiffs submitted that the current position of the law is that authority granted under representative orders is derived strictly from the terms of the said order and that the persons represented are not to pay any costs incurred by the representative unless ordered by court. That a representative order does not operate as a bar to any claims relating to the actions of the representative.

Learned counsel further submitted that in the case of **Ladak Abdulla Mohammad Hussein Vs Grffiths Isingoma Kakiiza CA 8 of 1995** Odoki JSC (as he then was) held that it may be true that in a suitable case a third party can apply for review under the inherent powers of court. But he can bring objection proceedings against execution or bring a fresh suit or file an application to set aside the decree or order. That O. 9 r 9 of the Civil Procedure Rules is not restricted to setting aside ex parte judgments but covers consent judgments entered by the Registrar. That the law gives the court unfettered discretion to set aside or vary such judgments on such terms as may be just nor is it restricted to parties to the suit but includes any person who has a direct interest in the matter and who has been injuriously affected. That the issue if locus standi is here fully settled because anyone who has a direct interest can challenge a consent order and may adopt

whichever procedure whether by suit, application, review or objector proceedings.

In rejoinder, learned counsel for the 4th, 5th, 6th, 7th and 8th defendants submitted that the plaintiffs' submissions in reply delved into matters of evidence and attempted to adduce the same from the bar rather than addressing the points of law raised. That this was a total misconception of the preliminary objections. Learned counsel also submitted that the **Shell (U) Ltd & others Vs Muwema & Mugerwa Advocates SCCA 2 of 2013** which the plaintiffs heavily rely on is distinguishable and does not relate to the objection raised or even the facts of the case before this court. Learned counsel relied on paragraph 5 of the plaint which according to him shows that what is in issue in this case are court orders rather than private agreement as was in Muwema case.

Further in rejoinder, learned counsel for the 4th, 5th, 6th, 7th and 8th defendants submitted that the judgment on admission in HCMA 234 of 2012 was not a partial fulfillment of the claim in HCCS 138 of 2008, HCCS 967 of 2005 and HCCS 760 of 2006 and was never appealed against. Therefore it is wrong to submit that the said judgment on admission effectively terminated the proceedings for which the representative order was given. Further that later, compromise was entered to fully settle the suits which were consolidated in HCCS 138 of 2008 which is annexure C to the plaint.

That the claims not concluded in the judgment on admission were disposed of in the compromise and therefore the two judgments complement each other.

Learned counsel also submitted that the said judgments are orders of court and cannot be illegal or unlawful. He also submitted that it is clear that the plaintiffs never sought at any given time to be added to HCCS 138/ as (consolidated) as parties in accordance with O. 1 r 8(2) of the Civil Procedure Rules and as such have no *locus standi* to bring this suit challenging the decree and orders entered in court proceedings where they were represented by the 5th to 8th defendants.

In further rejoinder learned counsel submitted that contrary to what the plaintiffs appear to propose as a compromise under O. 25 r 6 of the Civil Procedure Rules is not a mere agreement but rather a judgment of court. He relied on the case of **Saroj Gandesha Vs Transroad SCCA 13 of 2009** per Katureebe JSC (as he then was) where he held that a judgment entered on a agreement which receives the sanction of court and it constitutes a contract between the parties to the agreement, operates as an adjudication between them and when court gives the agreement its sanction becomes a judgment of the court. Learned counsel also cited the case of **Ismail Sunder Hirani Vs Noorali Esmail Kassam CA 11 of 1952** where it was held that in a case which has been settled by a compromise, the decree is passed upon a new contract between the parties and supersedes the original cause action. That therefore the plaintiffs cannot revert back to the original contracts of employment because those causes of action were superseded by the compromise entered by their representatives.

After a careful evaluation of the respective submissions by learned counsel regarding this issue, I will start by quoting the comments of the court of Appeal of Kenya in **Cahill & others Vs Nandhra & others [2006] 1 EA 35.** It was stated that a representative suit in one which is filed by one or more persons or parties under O. 1 r 8 of the Civil Procedure Rules on behalf of themselves and others having the same interest. There is no requirement that a person seeking to institute a suit in a representative capacity must establish that he had obtained sanction of the persons interested on whose behalf the suit is proposed to be instituted. The object for which O 1. R 8 of the Civil Procedure Rules was enacted was to facilitate the decision of questions in which a large body of persons is interested without recourse to the ordinary procedure.

The main purpose of the order was to forestall insuperable practical difficulties in the institution of separate suits in cases where the common right or interest of a community or members of an association or large sections of people were involved. Though the rule on representative actions should be relaxed and developed liberally to meet modern requirements of representative civil litigation, representative actions should not be allowed to work injustice to any litigating parties. Therefore O 1 r 8 of the Civil Procedure Rules being a facilitative one must be given a broad interpretation which will secure its purpose of enabling several parties to come to justice in one action rather than in separate actions.

The above is a very instructive pronouncement. From its reading it is clear that the purpose of O. 1 r 8 of the Civil Procedure Rules is to encourage parties to bring one suit instead of a multiplicity of suits. It is basically intended to reduce case backlog. Representative actions should not be allowed to work injustice to any litigating parties and that is why the representative order is advertised and any person is allowed to apply to be made a party to the representative suit. A representative however does not need to obtain sanction of the persons interested on whose behalf the suit is proposed to be instituted.

Bearing those principles in mind I must add that such suits as the present one are very undesirable and intend to only perpetuate litigating in the guise of fighting for the rights of the parties. In the case of **Jasper Mayeku & 198 others Vs Attorney General & others HMCA 618 of 2014**, this court held that the fact that the 2nd and 3rd respondents in the case were still the appointed and authorized representatives of the ISO employees, the applicants had no *locus standi* to challenge what was agreed upon by their representatives and advocates. The applicants were not party to the consent order and therefore could not challenge the same.

Similarly using the same analogy in the instant case, the fact that the 5th, 6th, 7th and 8th defendants are still the authorized representatives of the plaintiffs then the plaintiffs have no *locus standi* to challenge the orders of court. To decide otherwise would be to undermine the spirit of O. 1 r 8 of the Civil Procedure Rules and reinstate the mischief it was intended to solve.

I agree with the observation of Zehurikize J in **Bako Abila Catherine & 21 others Vs Attorney General & Kampala City Council HMA 0628 of 2009** which is still good authority to date that it has become increasingly common that were numerous plaintiffs successfully sue the Attorney General they tend to split at the execution level and splinter groups end up instructing new lawyers for purpose of recovering the amounts due to them. This is an abuse of court process for part of the judgment creditors to raise new issues through the new lawyers which is intended to perpetuate litigation with the attendant costs.

Learned counsel for the plaintiffs seemed to suggest that a representative in a representative suit has no authority to consent without the permission of the persons he/she represents. He also appears to suggest that the representative order does not extend to the taxation of costs stage. He further suggests that the persons on whose behalf the representative brings the suit are not liable whatsoever for the legal fees of the lawyer instructed by the representative and calls the represented persons free riders who should not carry the burden of lawyers' legal fees. With due respect, I disagree with the views expressed by learned counsel for the plaintiffs in his submissions. I have clearly spelt out the reasons for this position.

The **Shell V Muwema** case relied upon by learned counsel for the plaintiffs did not lay down a principle that that the persons represented in a representative suit must not pay legal fees. What the court meant is that the other represented person cannot be made to pay legal fees

of the representative in so as to leave the representative with no liability whatsoever in regard to the legal fees. In the ***Shell*** case the company which instructed Mr. Muwema entered an agreement with him privately but wanted to make the other represented companies to incur the liabilities created in the agreement. The Supreme Court could not allow that to happen since in my view would have been unjust and a breach of the doctrine of privity of contract. The only way they could be liable is if court so ordered as is in this case where court issued a decree in the terms of the compromise order as to the Advocates/Client Bill of costs and judgment on admission. The present case is distinguishable from the ***Shell*** case. Whereas in a representative suit the one persons who is named as plaintiff is, of course, a full party to the action, the others who are not named but whom she/he represents are also parties to the action. They are all bound in equal measure by the eventual decision in the case for the reasons I have given. I will also find merit in this objection and I accordingly uphold the objection.

4. Whether the suit is brought before the right forum.

Regarding this objection, learned counsel for the 4th, 5th, 6th, 7th and 8th defendants submitted that the orders which the plaintiffs seek to challenge in this case are the compromise dated 31st May 2013 with respect to HCCS 967 of 2005, 760 of 2006 and 138 of 2008 which they claim were unlawful and so should be set aside. They also seek that the taxation order be set aside for being unlawful and the orders of court in HCMA 234 of 2012 also be set aside on the same ground.

According to learned counsel all these were court decisions. He further submitted that annexure 'B' to the plaint is a ruling in MA 234 of 2012 which is purported to be unlawful yet the same ruling is continuously referred to as the judgment on admission by the plaintiffs. Learned counsel also submitted that all the parties in that case who are the defendants in this case save for the Attorney General were interestingly heard and the court considered submissions of all parties and made its decision as a partial fulfillment of the claims in HCCS No. 967 of 2005, 760 of 2006 and 138 of 2008.

Learned counsel also submitted that the same court and the Judge entered judgment in the terms of the compromise and issued a decree by the same Judge in the same court under O. 25 r 6 of the Civil Procedure Rules. That therefore this court is *functus officio* in all these matters under litigation in this suit. Further that once a court makes a decision it is *functus officio* and cannot nullify its earlier decision by making a later decision. He relied on the case of **Paul Nyamarere Vs Uganda Electricity Board (in Liquidation) CA 55 of 2008 citing Kamundi Vs Republic 1973 EA 540.**

Learned counsel for the 4th, 5th, 6th, 7th and 8th defendants also submitted that bringing this suit seeking to quash decisions made by a Judge amounts to inviting this court to sit as an appellate court in a decision made by the same court which is highly irregular and improper and is alien in the jurisprudence and should not be sanctioned by this court. Further learned counsel submitted that under S 66 of the Civil Procedure Act it is provided that unless otherwise expressly provided in the Act an appeal shall be from decrees or any

part of the decrees and from the orders of the High Court to the Court of Appeal. Therefore if at all the plaintiffs were aggrieved with the contested decisions of this court they ought to have filed an appeal in the Court of Appeal and not in this court. That this means that this suit is in a wrong forum.

In reply learned counsel for the plaintiffs submitted that the subsequent compromise order varied the original judgment and effectively entered a fresh contract. That as a result of the fresh contracts, a new judgment replaced the earlier judgment and therefore it is only the subsequent judgments that are to be enforced as per **Saroj Gandesha Vs Transroad Ltd CA 13 of 2009.**

Learned counsel further submitted that the consents which came after the judgment can be challenged because the court is not *functus officio* on such.

First of all, I would like to disagree with the submission and attitude by learned counsel for the plaintiffs that the concerned court order they seek to challenge are mere agreements. Once a compromise or consent is entered and the Court endorses the same, it becomes an effective court order or decree. Although these compromises and consents are treated as agreements they are in actual sense not mere private agreements. They are orders of court and can be executed as such. Therefore if they are to be challenged, the procedure through which they can be challenged is laid down in the law.

I therefore agree with the submissions by the defendants (4th to 8th) that it would be highly irregular and improper for this court to quash its own previous judgment in the way the plaintiffs suggest. It would have the effect of this court sitting on appeal in its own decision. I also agree that this court became *functus officio* once it endorsed the consent agreements and passed the decree and order. See: **Paul Nyamarere Vs Uganda Electricity Board** (supra)

Once a compromise or consent is entered and the court endorses it the same becomes effectively a court order or decree. Whereas consent orders are treated as agreements, in actual sense they are not mere private agreements. They are orders of court once endorsed and can be executed as such. Therefore if they are to be challenged, the procedure through which they are to be challenged is laid down in law. After judgment is passed, one can appeal to the Court of Appeal under S. 66 of the Civil Procedure Act or one can seek for a review of the decision under S. 83 of the Civil Procedure Act in the same court but not by filing a fresh suit. Alternatively one could seek the judgment to be set aside under O. 9 of the Civil Procedure Rules.

In my career and experience, I have never handled or come across a suit filed for one of post judgment corrective remedies envisaged by the law.

Therefore, for the reasons I have given, I will find merit in this objection. This suit has been filed in a wrong forum and wrongly too.

5. Whether the plaintiffs brought this matter through the right procedure?

On this issue, learned counsel for the defendants submitted that this suit is in fact an appeal disguised as a suit. That the procedure of filing an appeal is by way of a Notice of Appeal under rule 76 of the Court of Appeal Rules and not by ordinary plaint. Therefore this suit is incompetent, untenable and should be dismissed with costs because the procedure adopted is unprecedented. That the Attorney General is not a party to this suit and therefore any outcome from this suit would not bind him. Further that the decree and orders have been substantially executed. That under paragraph 6(g) of the plaint, the plaintiffs contest future pension and/or lumpsum payment which is none-existent and is speculative.

Learned counsel further submitted that under the compromise which is annexure 'C' to the plaint paragraph 14(ii), it was only provided that the parties shall engage with each other to reach an agreement on lumpsum payment and there is no evidence of such agreement or engagement. That this means that his suit is moot and inconsequential.

In reply learned counsel for the plaintiffs submitted that the objection of the defendants is a misapprehension of the cause of action. That the suit is not an appeal disguised as a suit. That the procedure adopted of suing by plaint is not unprecedented because it is a default procedure for filing suits. Further learned counsel reiterated that an aggrieved third party has many options including the option of filing a fresh suit.

As I have already held earlier, once a compromise or consent is entered and endorsed by court, the same becomes a court order or decree. They can thus be executed as such. Therefore if the decree or orders are to be challenged, the procedure through which they are to be challenged is laid down in the law. I do not agree with the submission that a person who seeks to challenge a consent order can adopt whichever procedure they fee desirable to them. If it is a taxation order the procedure for challenging the same is clear. An appeal to the High court is in order. If it is a compromise then an application for review setting aside arising from that will be in order too. This would enable the court to handle the case with the files from which the orders were made available to it. However a fresh suit complicates the whole process as it will have a distinct and separate file independent from all the files complained about. It also leads to misjoinder of causes of action which should ordinarily be handled separately. For example a taxation order and compromise order which were made on separate days and one before the Registrar and the other before a judge are challenged in the same suit. The Supreme Court case of **Ladak Abdullah** (supra) did not give parties liberty to choose whichever procedure a party wishes to use. In fact in the judgment attached to counsel for the plaintiff's submissions at P. 12 the court stated that:-

“It may be that in a suitable case a third party can apply for reviewbut he can bring objection proceedings against execution or bring a fresh suit, or file an application to set aside the decree order” (emphasis mine).

Clearly the key phrase in the quote is “in a suitable case”. Therefore, the Supreme Court in that case held that each of the procedures listed must be adopted in a suitable case. In fact the Supreme Court in that case suggested that the best procedure for challenging a consent order entered by a Registrar is an application to have it set aside. If learned counsel had followed this authority, we would not have had these objections. Likewise, I will uphold this objection and find that the plaintiffs did not bring this matter through the right procedure.

Having upheld all the objections, I hereby hold that this suit is incompetent and is accordingly struck out with costs.

Stephen Musota

J U D G E

27.10.2016_