

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**CIVIL DIVISION**

**COMPANY CAUSE No. 013 OF 2017**

**BARYAN RAJINDER SINGH ::::::::::::::::::::::::::::::: APPLICANT**

*Versus*

**POLYPACK LIMITED ::::::::::::::::::::::::::::::: RESPONDENT**

**BEFORE: HON. MR. JUSTICE STEPHEN MUSOTA**

**RULING**

This is a ruling on the prayer by the counsel for the respondent that this court should disregard all the steps taken and concessions given by counsel for the respondents in the previous sessions before court.

At the hearing counsel MacDosman Kabega appeared for the applicant, Mr. Oscar Kamusiime Mwebesa appeared for the applicant and later Mr. Birungi Cephas.

Briefly the background of this ruling is that on the 5<sup>th</sup> April 2017 the applicant filed an application MC 13 of 2017 for an order restraining the respondent Company from holding the meeting scheduled for 6<sup>th</sup> April 2017 and costs of the application. On the same day they also filed an application MA 225 of 2017 for interim order restraining the respondent Company from holding the meeting scheduled for 6<sup>th</sup> April 2017 until the main application has been disposed of and costs of the application. This court entertained the interim application before the Registrar and granted the interim injunction. On the 5<sup>th</sup> April 2017 the respondent Company filed an application to set aside the interim injunction MA 98 of 2017. On the 20<sup>th</sup> June 2017 the applicant filed an application MA 419 of 2017 to amend the main application by adding prayers

for orders that a forensic audit be done on the respondent Company from 2007 to date by a reputable firm and the Managing Director be suspended pending the audit. When the hearing of the application to set aside the interim order came up for hearing counsel for both parties agreed to try settling the matter by consent. Following this representation this court adjourned to allow the parties time to consider settling the matter. On the 6<sup>th</sup> July 2017 parties appeared before this court and both counsel agreed that all the applications be withdrawn including the main application, and that the interim order be vacated. Following this, by the consent of the parties court vacated the interim injunction and the application to set it aside and was left with only the main application in which the parties entered a compromise by agreeing that an audit of the company be done. As a result counsel for the applicant suggested the firm of Price Water House Coopers to do the audit but the respondents were not agreeable to this. This court then adjourned the matter for a week to the 13<sup>th</sup> July 2017 to allow the parties time to agree on an external auditor. When the matter came up, the previous Counsel Kamusiime was replaced by Mr. Birungi who then challenged what this court had done.

The reasons that counsel gave were that auditors are appointed by the members in Annual General Meeting of the Company and that there is already available audits internally done by the internal auditors. That this is an application to stop a meeting and so court must restrict itself to the pleadings before it. That bringing in issues of the audit amounts to diverting the issues. That affairs of a Company are run by the Articles and Memorandum of Association of the Company. That since the Company already conducted an audit, there is no need to conduct a fresh audit since the applicants have not challenged the current audit.

In reply counsel for the applicant submitted that it is true the affairs of the Company are run by the Articles and Memorandum of Association but where there is a failure by the Company to call any Annual General Meeting for 10 (ten) years then there is a problem. That what their client is looking for is to see what is in the Company. That even the other orders which the respondent's counsel claims are not part of the application were added through the application for leave to amend the main application. That the applicant is also not trying to challenge the audit of

Mungereza but is simply saying that he needs an independent audit because the respondent accepted the Company is not doing well.

This court was taken aback by the submissions of counsel Birungi. The counsel whom this court considered to be duly instructed progressively agreed on several issues which this court followed in the spirit of settling this matter amicably. In my view the parties had properly identified where the dispute was coming from and resolved it on the terms they had chosen. What was remaining was decision on which firm would conduct the audit. I therefore find it unreasonable for Mr. Birungi to take us back after this court has even struck out some applications on the basis of the consent of the respective counsel. The application has already been compromised and the only issue remaining is who will conduct the external audit. All the actions taken by Mr. Birungi's colleague before Mr. Birungi took over is binding on him and so he cannot depart from the same. This court is also suspicious as to why the respondent Company is resisting an audit to verify the true position of the Company if they have nothing to hide.

The parties' counsel entered a compromise which under order 25 rule 6 of the Civil Procedure Rules is not a mere agreement but rather a judgment of court. In **Saroj Gandesha Vs Transroad SCCA No. 13 of 2009 per Katureebe JSC** it was held that:

***“A judgment entered on an agreement, which receives the sanction of the 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.”***

This court gave the compromise its sanction when it vacated the application to set aside the interim order in this case. Therefore this becomes the adjudication of this court on the matter before it.

For those reasons this court directs that the parties appoint an agreeable reputable firm to conduct an audit of the company's financial position from 2007 to the date of this order. In the event that

the parties fail to agree it is hereby ordered that the audit firm JSR Certified Accountants which was chosen and proposed by the applicant shall be the firm to conduct the audit.

I so order.

**Stephen Musota**

**J U D G E**

**13.09.2017.**

**13.09.2017:-**

Mr. MacDosman Kabega for applicant.

Mr. Birungi for respondent absent.

Both parties absent.

Ms. Ejang D. Clerk.

**Counsel for the applicant:-**

The latter is for ruling, it was supposed to have come earlier on 30/8/2017 but didn't take off because of what was taking place in the court.

**Court:-**

Ruling read and delivered in open court.

**Sarah Langa Siu**

**DEPUTY REGISTRAR**

**13.09.2017**

**RULING**