

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**MISC. APPLICATION NO. 311 OF 2019**  
**(ARISING OUT OF MISC. CAUSE NO. 215 OF 2018)**

**TADEO SERUWAGI:.....APPLICANT**

**VERSUS**

- 1. SMART PROTUS MAGARA**
- 2. FINANCIAL INTELLIGENCE AUTHORITY & 13 ORS:RESPONDENTS**

**BEFORE HON. JUSTICE SSEKAANA MUSA**

**RULING**

This is an application brought under Section 82 & 98 of the Civil Procedure Act, Order 46 Rule 1,2&8 of the Civil Procedure Rules.

The applicant sought for orders that the judgment and orders in Misc Cause No. 215 of 2018:- Smart Protus Magara vs Financial Intelligence Authority & 138 Ors be reviewed and varied or set aside to exclude reference to the applicant as well as costs of the application.

The application was supported by the affidavit sworn by the applicant whose grounds are briefly that;

1. The Applicant was not a party to the proceedings in Misc. cause No. 215 of 2018:- Smart Protus Magara vs Financial Intelligence Authority and Ors was condemned unheard.
2. The Applicant is aggrieved by the decision of the Honorable Court to the extent that it ordered money frozen on the different accounts

held by Mr. Smart Protus Magara or his Associates inclusive of the Applicant should be transferred to the official receiver bank accounts.

3. The Applicant like any other person was also invited to and invested in the D9 club.
4. It is just and fair that this application be granted.

The 2<sup>nd</sup> respondent filed an affidavit in reply opposing the application. The affidavit was sworn by Sydney Asubo the 2<sup>nd</sup> respondent's Executive Director whose grounds were briefly that;

1. That the court delivered a ruling in respect of Miscellaneous Cause No. 215 of 2018 (Smart Protus Magara v Financial Intelligence Authority & Others)
2. That the court delivered this ruling together with the ruling in Miscellaneous Cause No. 423 of 2017 (PalmFox International Limited v DFCU Bank Limited, Bank of Uganda and Financial Intelligence Authority).
3. That in PalmFox International Limited v DFCU Bank Limited & 2 Others, this Honorable Court confirmed that Tadeo Seruwagi was an affiliate of the Ponzi Scheme D9 Club.
4. That a nexus was established between the Applicant (PalmFox International Limited) and D9 Club since the majority shareholder – Tadeo Seruwagi was an affiliate of the Ponzi Scheme.

5. That Tadeo Seruwagi's affiliation to the Ponzi Scheme (D9 Club) was the main reason for the justification of the freezing of the his accounts.
6. That the court relied on a copy of a memorandum of understanding presented by Tadeo Seruwagi for purposes of account opening which clearly indicated his affiliation with the D9 Club.
7. That Tadeo Seruwagi received deposits from different customers for purposes of the Ponzi Scheme and the victims sought legal redress and compensation.
8. That upon confirming the relationship between Tadeo Seruwagi and D9 Club, the court held that the victims of the Ponzi Scheme should be considered for compensation out of the money that was frozen on all accounts held by Smart Protus Magara and his associates like Tadeo Seruwagi.
9. That it was right, fair and proper for the Honorable Court to order as it did since some of the victims seeking compensation had made deposits in Tadeo Seruwagi's accounts.

The parties were instructed to file written submissions that were considered by this court.

The applicant brought this application on grounds that he was an aggrieved party who had sufficient cause to warrant review of the judgment in Misc. Cause No. 215 of 2018.

According to Section 82 of the Civil Procedure Act,

*“A person considering himself or herself aggrieved-*

- by a decree or order from which an appeal is allowed but from which no appeal has been preferred; or,*
- by a decree or order from which no appeal is hereby allowed.....*

*may apply for a review of the judgment to the court which passed the decree or made the order.....”*

Additionally, O.46 r1 of the Civil Procedure Rules provides that applications of this nature must be premised on;

*“the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his or her knowledge or could not be produced by him or her at the time when the decree was passed or the order was made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason...”*

From the foregoing, the first question this court ought to ask is whether the applicant is an aggrieved person.

The applicant under paragraph 4 of his affidavit states that this court directed that the 138 respondents to the said application should be considered for compensation out of money frozen on the accounts of Mr. Smart Protus Magara and his associates like Tadeo Seruwagi. Counsel submitted that by implication of the said order is that money held and frozen on the applicant's Bank account is to be taken away from him and shared amongst other people. Such an order directly deprives him of his property and as such the applicant is aggrieved by it.

The 2<sup>nd</sup> respondent submitted that the applicant is not an aggrieved person in the sense of the law and he can be deemed to have likely benefited from

the Ponzi scheme at the expense of unsuspecting Ugandans who he recruited well knowing its nature.

The phrase “any person considering himself aggrieved” was held in *Re: Nakivubo Chemists [1979] HCB 12*, to mean a person who has suffered a “legal grievance”. “Legal grievance” was defined in *Ex parte Side Botham in Re Side Botham (1880) 14 Ch. D 458 at 465 per James L.J* as follows;

*“But the words “person aggrieved” do not really mean a man who is disappointed by a benefit which he must have received if no other order had been made: A person aggrieved must be a man who has suffered a legal grievance, a man against whom a decision has been pronounced which has wrongfully deprived him of something, or wrongfully affected his title.”*

The applicant in this case states that he was aggrieved by the court order that directly deprived him of his property. We have to note the rationale behind that specific court order.

In *Palmfox International (U) Ltd vs DFCU Bank (U) Ltd & 2 Others Misc. cause No 423 of 2017*, this court held;

“...The relationship between the applicant and its majority shareholder (70%) and Managing director and his affiliation to a Ponzi scheme/Pyramid Scheme-D9 Club was the main reason for the justification of the freezing of the applicant’s accounts.

That relationship cannot be wished away by legalese of a corporate veil, that the applicant is separate from its shareholders, who are husband and wife. The High Court under section 20 of the Companies Act is empowered to lift the veil of incorporation. In the case of *Salim Jamal & 2 others vs Uganda Oxygen Ltd & 2 others [1997] 11 KALR 38*; the Supreme Court held

*that corporate personality cannot be used as cloak or mask for fraud. Where this is shown to be the case, the veil of incorporation may be lifted to ensure that justice is done and the court does not look helplessly in the face of such fraud.*

This court agrees with the 1<sup>st</sup> respondent's argument that the Anti-Money Laundering Act also enjoins the bank to detect any suspicious transactions based on the business relationship the applicant as a company had with the Ponzi scheme-D9 Club for which the said Tadeo Seruwagi was an affiliate.

Section 9(1)(c)(i) of the Anti-Money Laundering Act provides that;

An Accountable officer shall-

*"Examine as far as possible and seek information as to the origin and destination of the money, background and purpose of the transaction or business relationship, and the identity of the transacting parties, including any ultimate beneficiary."*

The Anti-Money Laundering Act requires them to undertake further due diligence measures. It provides;

*"An accountable person shall undertake further due diligence measures to verify the identity of the beneficial owner of the account, in case of legal persons and other arrangements, including taking reasonable measures to understand the ownership, control and structure of the customer...."*

There is a nexus between the applicant and D9 Club since the Majority Shareholder-Tadeo Seruwagi was an affiliate of Ponzi scheme and it is the duty of the 2<sup>nd</sup> and 3<sup>rd</sup> respondents to investigate the transactions of the applicant to determine whether they had any direct link to the prohibited Ponzi Scheme.

The findings of the 2<sup>nd</sup> and 3<sup>rd</sup> respondent should form the basis of continuing the freeze of the 2 bank accounts and later transfer of the money on the said account to the victims of the Ponzi scheme...”

The court in **Smart Protus Magara & 138 others vs FIA Misc. cause No. 215 of 2018** held that;

“...In accordance with the powers vested in this court, this court shall proceed to grant remedies to the victims of the Ponzi Scheme-D9 Club under Section 33 of the Judicature Act...

The Court grants the following orders;

The rest of the 138 applicants who joined this suit and others who reported to police and made statements at police should be considered for compensation out of the money that was frozen on all the accounts held by the applicant and his associates like Tadeo Seruwagi...”

The two matters were consolidated and the applicant was present at most of the hearings hence was aware of the ongoing proceedings. The court exercised its powers lawfully in deciding that money frozen on the account of the applicant be used to compensate the rest of the 138 victims of the Ponzi scheme. I therefore find that the applicant was not an aggrieved person in the legal sense.

The second question is whether the applicant has sufficient cause to warrant review.

The applicant states in his affidavit that he was never given an opportunity to be heard when the court decided that the amounts frozen on the applicant's accounts be transferred to the official receiver and shared amongst the victims. The applicant stated that he was never heard or

allowed to defend himself in the proceedings that led to the grant of the same.

Under paragraph 9 of his affidavit, the applicant denied being an associate of the 1<sup>st</sup> respondent for his trade. He stated that just like the 138 other people, he was also invited to participate in the D9 group with a promise to receive payments out of his investment. The applicant proceeded to state that the scheme operated a network marketing strategy which entailed that the more persons one recruited to join, the more bonuses and credits one received. The applicant stated that he has never participated in the management of the D9 group.

The applicant stated that he never retained any money from members he invited to the group and that all the money collected was paid to the 1<sup>st</sup> respondent.

Counsel for the 2<sup>nd</sup> respondent submitted the following as reasons as to why the applicant does not have sufficient cause to warrant review.

1. He has produced no evidence to show that he reported to police like all other if not most victims of the D9 Ponzi scam did.
2. He never officially challenged the freezing of his personal accounts.
3. If the applicant believed and knew that his money was wrongfully frozen, he would have filed a court case like his counterpart, the 1<sup>st</sup> respondent did but he never filed the same which meant he was all along okay and in agreement with the status quo.
4. The applicant remained silent and sat on his supposed rights when Misc. Cause No. 215 of 2018 and Misc. Cause No. 423 of 2017 which



were at a later date consolidated and heard jointly and he was in personal attendance at most of the hearings.

5. During the subsistence of both the above cases the applicant had the chance to be heard.

The 2<sup>nd</sup> respondent's counsel also submitted that the applicant was adjudged in Misc. Cause 423 of 2017 to be an affiliate of the D9 Club and not otherwise.

Counsel further submitted that the applicant signed a memorandum of understanding binding himself as an affiliate of the D9 Club- a Ponzi scheme and Turkish nationals for purposes among others to provide training for D9 Clube team leaders in Turkey, help with account activations using D9 Clube of Entrepreneurs system e-money and growing pyramid the pyramid business. The applicant claims to have been an ordinary member but brought no evidence to indicate that other ordinary members like himself entered similar agreements to grow their business which goes to show that the applicant was or is an affiliate of the D9 Club, one of the leaders just like the 1<sup>st</sup> respondent hence an associate of his (the 1<sup>st</sup> respondent).

The applicant's counsel submitted in rejoinder that the memorandum of understanding was not executed on behalf of the D9 club but rather to invite members to join to boost further earnings in the club. The applicant was mandated to give feedback to those he recruited. Counsel submitted that had the court been aware of such facts relating to the innocence and non-participation of the applicant in the management of the business, it would not have reached the decision to order payment of the applicant's money.

The applicant seemed to be premising his application on Error apparent on the face of record. What is an error apparent on the face of the record cannot be precisely and exhaustively defined but should be determined judicially on the facts of the case. The contention of the applicant being condemned unheard cannot be sustained since he was at all times aware of the proceedings and indeed challenged money frozen on one of the bank accounts which he felt was not associated with the Ponzi Scheme in DFCU. By Implication the Frozen Account he never challenged contained money that had been collected through the D9 Clube.

The applicant's case could also be grounded on other sufficient reason. This is not defined under the Civil Procedure Rules. The applicant has not set out any other reason sufficient for court to review its decision. 'Any Other sufficient reason' must mean 'a reason sufficient on grounds, at least analogous to those specified in the rule.'

The applicant has not set out any of such reason.

Bearing in mind the above authorities, I find that the applicant has not demonstrated sufficient reason or justification for this court to review its ruling.

The application is accordingly dismissed.

The 2<sup>nd</sup> respondent is awarded costs.

**I so order**

**SSEKAANA MUSA**

**JUDGE**

**18<sup>th</sup> September 2020**