

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT MASINDI  
CIVIL SUIT NO. 040 OF 2020

TUMURAMYE JULIUS ::::::::::::::::::::::::::::::::::::::: PLAINTIFF

*VERSUS*

SHENGLI CONSTRUCTION CO. LTD ::::::::::::::::::::::::::::::: DEFENDANT

**RULING**

*Before: Hon. Justice Byaruhanga Jesse Rugyema*

- [1] The Plaintiff filed **C.S. No. 01 of 2019** against the Defendant Construction Co. Ltd. The suit was amicably settled by the parties vide a consent in which it was agreed among others that the Defendant shall restore the borrow pit within the period of 60 days from the date of the consent.
- [2] The complaint of the Plaintiff and apparently admitted by the Defendant company is that the Defendant never restored the borrow pit within 60 days as was agreed in the consent Judgment.
- [3] The Defendant having failed to restore the borrow pit within agreed 60 days from the date of the consent, the Plaintiff entered into an agreement with a one **Ms. Byonta Construction Company** to do the work of restoring the borrow pit at an alleged cost of **UGX. 140,664,000=.**
- [4] In a bid to recover the alleged cost of restoration of the borrow pit from the Defendant, the Plaintiff filed the **C.S. No. 40 of**

2020 for inter alia, recovery of UGX. 140,664,000= being special damages arising from money paid to **Ms. Byonta Construction Company ltd** for the restoration of the borrow pit. He further pleaded that in **C.S. No. 01 of 2019**, he sued the Defendant company for breach of a rental agreement but the suit was settled in a consent agreement where **C.S. No. 01 of 2019** was withdrawn on terms that included the Defendant to restore the borrow pit within the period of 60 days from the date of the consent.

### **Preliminary Objection**

- [5] It is at the commencement of the hearing of this suit that the Counsel for the Defendant **Mr. Aaron Baryabanza** raised a preliminary objection that the Plaintiff's suit is barred by law and incompetent as it contravenes the provisions of **S. 34 (1) CPA**.
- [6] Counsel submitted that in the instant case, a consent judgment having been entered in favor of the Plaintiff and the terms of the consent judgment having been allegedly violated, the Plaintiff would have extracted a decree from the said consent judgment and apply to Court to execute the same but not by the Plaintiff to take it upon himself to allegedly contract a company to restore the borrow pit and then file a suit to recover special damages allegedly paid to the said company to restore the borrow pit.
- [7] Counsel concluded that since the Plaintiff's instant **C.S. No. 40 of 2020** arises from **execution, discharge** and **satisfaction** of a decree of the Court in **C.S. No. 001 of 2019**, it is barred by **S.34(1) CPA**. In the premises, he prayed for dismissal of the

suit with costs to the Defendant on the ground that it is barred by law.

- [8] **Counsel Simon Kasangaki** for the Plaintiff submitted that the Plaintiff filed **C.S. No. 01 of 2019** which was amicably settled by consent, that the Defendant partially complied with the consent by paying the Plaintiff **UGX. 18,620,000=** but failed to refill the burrow pit which the Plaintiff himself refilled through **Ms. Byonta Construction Co.** at a cost of **UGX. 140,664,000=**. The Defendant refused to refund the sum and this prompted the Plaintiff to apply for execution of the consent agreement to recover the said sum but the execution did not yield results. That it was upon the advice of the Assistant Registrar of this Court that the Plaintiff filed the present suit to recover **UGX. 140,664,000=**.

#### **Determination of the Preliminary Objection**

- [9] Under **S. 34(1) of the CPA**, it is provided as follows:

*“All questions arising between the parties to the suit in which a decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit”*

- [10] In this case, the Plaintiff by a consent agreement with the Defendant settled **C.S. No. 01 of 2019** which was withdrawn on terms, in particular that

*“the defendant shall restore the borrow pit on the 5.2 acres of the Plaintiff’s land within a period of sixty (60) days from the date of this consent agreement...”*

It is apparent that the Defendant breached the above term of the consent agreement. It is Counsel for the Defendant's contention that the Plaintiff ought to have applied for execution of the consent judgment as required by **S.34 (1) CPA** instead of filing the fresh instant suit **No. 40 of 2020** to recover **UGX. 140,664,000=** as costs of his own restoration of the burrow pit using **Ms. Byonta Construction Co.**

[11] Counsel for the Plaintiff however submitted and argued that the head instant suit **No. 40 of 2020** is independent of the execution process and therefore cannot be said to be covered by **S.34 (1) of the CPA**. That the reliefs sought in the suit are not grounded in the execution of this matter, no relief claimed flows from the execution in this matter. He concluded that the determination of the dispute and conclusion of the reliefs sought by the Plaintiff cannot be disposed of by way of an Application under **S.34 (1) CPA**. That they require an ordinary suit to prove them, the course the Plaintiff adopted.

[12] However, on perusal of the Plaintiff's Plaintiff in the instant head suit **C.S. No. 40 of 2020**, I find that it is not true and correct that the reliefs sought in this suit were not grounded on the execution of the consent agreement in **C.S. No. 01 of 2019**.

[13] In the first instance, the defendant was not party or privy to the consent agreement between the Plaintiff and **Ms. Byonta Construction Co. ltd** for the restoration of the borrow pit at the cost of **UGX. 140,664,000=** and therefore the Defendant is not bound by it at all. The Plaintiff however had to bring in the Defendant by virtue of the consent Judgment in **C.S. No. 01 of 2019** and this is clearly brought out in paragraph 4 of the Plaintiff.

[14] Secondly, since the Defendant was not party to the contract agreement between the Plaintiff and **Ms. Byonta Construction Co. ltd**, the Plaintiff's claim for general damages would only be plausible for breach of the consent agreement of **C.S. No. 01 of 2019** by the Defendant and nothing else.

[15] It is therefore clear from the foregoing that the questions that arise in this **Civil Suit No. 40 of 2020** were between the parties to the consent Judgment and it concerned the execution of the consent Judgment of the parties in **C.S. No. 01 of 2019**. As conceded by the Plaintiff's Counsel in his submissions, it arose after the execution of the consent Judgment failed to yield results.

[16] **S. 34 of the CPA** provides that the procedure for challenging execution is within the same suit, not separate action; **Simba (U) ltd & 5 ors v UBC; S.C.C.A No. 3 of 2014**, Arach-Amoko JSC in this authority further observed that under **S. 34 (2) CPA**,

*“The Appellants could have applied to treat the application as a suit under Section 34(2) of the Civil Procedure Act and to be allowed to adduce oral evidence and to cross examine the Respondent's witnesses on the supporting Affidavit if they so wished”.*

[17] The Section applies to matters arising subsequent to the passing of a decree (and in this case, the consent judgment); and deals with objections to execution, discharge and satisfaction of a decree. It lays down the principle that matters relating to the execution, discharge or satisfaction of a decree arising between the parties, or their representatives, should be determined in execution proceedings and not by a separate

suit; **Onyait Vs Peter Kimanje (The Official liquidation UEB) H.C.C.S No.548/2016 [2020] UGHCCD 22.**

- [18] The underlying object of this provision is to provide cheap and expeditious remedy for the determination of certain questions without recourse to a separate suit and to prevent needless and unnecessary litigation. There must be an end to litigation; **Manunga Timotheo & Anor Vs Minister of Lands and settlements H.C.M.A No.142 of 1976 (K).**
- [19] The Section confers exclusive jurisdiction on the executing court in respect of all matters relating to execution, discharge or satisfaction of a decree between parties or their representatives. Once a suit is decreed, this section requires the executing court alone should determine all questions in execution proceedings and filing of a separate suit is barred, **See Desh Bandhu Gupta Vs M.L.Anand & Anor [1994] I S.C.C. No.131 (Supreme Court of India).**
- [20] From the foregoing, it is clear that the determination of the dispute and consideration of the reliefs sought by the Plaintiff could be disposed of by way of an application under **S.34(1) and (2) CPA** but not by a separate suit as wrongly adopted by the Plaintiff.
- [21] In the premises I conclude that the questions between the parties relating to execution, discharge or satisfaction of the consent judgment would only be investigated by the executing Court in **C.S. No. 01 of 2019**. As a result, I find the present suit being barred by **S.34 (1) CPA**. The Plaintiff ought to have made an application for execution of the consent judgment instead of filing a separate suit to recover sums arising from the consent. In the premises, the preliminary objection is upheld

and the Plaintiff's suit is dismissed on the ground that it is barred by **S.34 (1) CPA**. No order is made as to costs since the defendant itself admit that it breached part of the consent judgment which prompted the Plaintiff to wrongly file the suit in question.

Signed, Dated and Delivered at Masindi this **26<sup>th</sup> day of August, 2022.**

**Byaruhanga Jesse Ruyema**  
**JUDGE**