

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

**MISCELLANEOUS APPLICATION NO.0679 OF 2021  
(Arising from Misc. Cause No. 0165 of 2020)  
(Arising from HCCS No. 967 of 2005, 760 of 2006 and 138 of 2008)**

- 1. HENRY LWETABE**
- 2. MAKUBA DENIS**
- 3. PAUL BALINGANIRE (Suing through their lawful attorney Henry Lwetabe)**
- 4. IGA EDWARD**
- 5. RWEKUUTA REUBEN:.....:APPLICANTS**

**VERSUS**

- 1. ATTORNEY GENERAL**
- 2. AUDITOR GENERAL**
- 3. THE OFFICIAL RECEIVER/LIQUIDATORS  
UGANDA ELECTRICITY BOARD:.....:RESPONDENTS**

**BEFORE: HON. JUSTICE SSEKAANA MUSA**

**RULING**

This is an application for leave to appeal against the ruling of this court in Miscellaneous Cause No. 0165 of 2020 brought under Order 44 rules 1,2,3 & 4 of the Civil Procedure Rules. The grounds for the application were stated briefly in the Notice of Motion and in the affidavit in support of the application but briefly stated that;

- i. That the learned trial judge erred in law and fact when he ruled that 31<sup>st</sup> march 2001 was the cut-off date of employment for the appellants.
- ii. The learned trial judge erred in law and fact when he asserted that there was no continuous employment of the applicants.
- iii. That the applicants' intended appeal raises substantial points of law which merits serious consideration by the court of appeal.
- iv. The applicants do not have an automatic right of appeal against the orders contained in miscellaneous cause No. 165 of 2020 to the court of appeal.
- v. That it is in the interest of justice and equity that the orders sought in this application be granted as this is a proper case deserving of grant of the orders sought therein.

The applicants were represented by *Joel Kidandaire* while the 1<sup>st</sup> respondent was represented by *Geoffrey Madette (SSA)* and 2<sup>nd</sup> respondent was represented by *Okello Oryem Alfred* and 3<sup>rd</sup> respondent was represented by *Tugumisirize Marion*.

The parties filed written submissions and the same have been considered in this ruling.

### ***Determination***

This court in Misc. Cause No. 165 of 2020 held that the applicants' cut-off date of their employment was 30<sup>th</sup> march 2001 when UEB went under statutory liquidation and the same should be used to compute their entitlement whereas the applicants contended that their employment with UEB went beyond that date. The applicants dissatisfied with that ruling intend to lodge an appeal at the court of appeal, however, the applicants have no automatic right of appeal hence this application.

Counsel cited Order 44 Rule 1(2) (3) and (4) of the CPR SI 71-1 as amended, which enjoins this court with powers to grant leave to appeal to a litigant. Further that in the case of *Sango bay Estates Ltd v Dresdner Bank [1972] EA 17* the Court was

of the view that while considering an application for leave to appeal, the same shall be granted where the applicant has shown that there are grounds of appeal that merit judicial consideration.

He submitted that the applicants had an arguable case for appeal with a high chance of success whose grounds of appeal were as stated above.

On the other hand, counsel for the 1<sup>st</sup> respondent submitted the applicants' intended grounds of appeal did not raise any substantial question of law to be decided on which is to be decided for the first time or one where the decision of the superior court will be of public advantage. That the applicants did not have a bonafide and arguable case on appeal for the reason that the cut-off date was fixed by subsidiary legislation and could not be otherwise as stated in the Public-Enterprise Reform and Divestiture (vesting of undertaking of Uganda Electricity Board) Instrument No. 18 of 2001.

### ***Analysis***

**Order 44 rule 2 of the Civil Procedure Rules** provides that an appeal under the rules shall not lie from any orders except with the leave of the court making it a precondition to seek to appeal an order of such nature to the court which issued the order before a party may seek to for orders before the court which an appeal would lie if leave were not given.

**Order 44 Rule 3 of the Civil Procedure Rules** provides that applications for leave to appeal shall in the first instance be made to the court making the order sought to be appealed from.

In the case of ***Herbert Sekandi t/a Land Order Developers v Crane Bank Ltd HCMA No. 44 of 2007***, noted that an applicant for leave to appeal to the court of Appeal must show that the application for leave to appeal bare substantial question of law to be decided by the appellant court and that the intended appellant has a bonafide and arguable case on appeal with what amounting to a

question of law is that the issue raised or involved one of general principle which is to be decided for the first time or where the question is one upon which further argument and decision of the superior court would be to the public advantage. From this decision, it would mean that an applicant for leave to appeal is duty bound to show the court that the application in question bears substantial questions of law to be decided by the appellate court and has a bonafide and arguable case on appeal.

Considering the above arguments, it is the considered view of this court that the applicant has not proved any of the above-required ingredients for this court to exercise its discretion and grant the applicant leave to appeal its earlier decision. No sufficient grounds have been raised by the applicant to convince this court otherwise than the speculative submissions that the applicant is aggrieved by the court's decision.

The applicants have not shown by affidavit evidence that there are arguable grounds to be considered by the appellate court but merely recited that they are aggrieved by the court ruling. Leave to appeal will be given where: the court considers that the appeal would have prospect of success; or there is some compelling reason why the appeal should be heard.

In the case of ***Swain v Hillman [2001] 1 All ER 91*** Lord Woolf, MR noted;

“that a real prospect of success means that the prospect for the success must be realistic rather than fanciful. The court considering a prospect for permission is not required to analyse whether the grounds of the proposed appeal will succeed, but merely whether there is real prospect of success”

See also ***Degeya Trading Stores (U) Ltd vs Uganda Revenue Authority Court of Appeal Civil Application No. 16 of 1996***

In an application of this nature, the applicant must clearly show the grounds upon which they intend to appeal and must further illustrate the likelihood of success

on appeal by laying out those grounds. It was not enough for the applicants to aver that they were aggrieved by the court's decision rather they had to show that the intended appeal has a chance of success.

The main application erroneously came to this court as a new cause or fresh matter and yet it had arisen from old suits of 2005, 2006 and 2018. This was a total abuse of court process since the matters had been litigated and ended up in a consent judgment/decreed under HCCS No. 967 of 2005, 760 of 2006 and 138 of 2008 which was left with only issue of guidance on the formula to follow in computation of the applicants' entitlements by the Auditor General.

Indeed the Auditor General gave guidance and the applicants want to challenge the said guidance by way of an appeal. This would be contrary to section 66 (2) of the Civil Procedure Act which provides; ***No Appeal shall lie from a Decree passed by the court with consent of the parties.***

The applicants are trying to use a wrong avenue to challenge the whole decision of the consent by way of the fresh proceedings. This court has given the clarity which the applicants sought about the proper cut-off date for computation of their compensation based on a statute which created the different companies after splitting Uganda Electricity Board in 1999. This cannot be a subject of an appeal.

The application lacks merit and is therefore dismissed with costs to the respondents. The 1<sup>st</sup> applicant should solely meet the costs of this application (personally).

I so Order

***Ssekaana Musa***

***Judge***

***31<sup>st</sup> January 2023***