

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT ARUA**  
**MISCELLANEOUS CAUSE NO. 0024 OF 2021**

- 5        1. JUNGIERA GEOFFREY  
          2. MUGABE GREGORY ..... APPLICANTS

**VERSUS**

- 10       1. NATIONAL AGRICULTURAL  
          ADVISORY SERVICES (NAADS)  
          2. OKELLO JIMMY ..... RESPONDENTS

**BEFORE: Hon. Justice Isah Serunkuma**

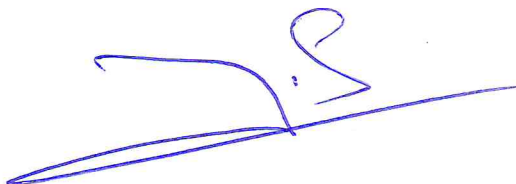
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**RULING**

This application was brought under Section 33 of the Judicature Act Cap 3, Section 98 Civil Procedure Act Cap 71 and Order 52 rule 1, 2 and 3 of the Civil Procedure Rules S1 71-1.

20       The applicants seek for orders that;

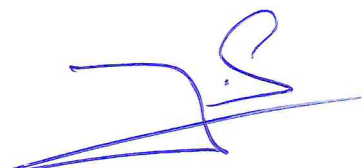
1. The 1<sup>st</sup> respondent halts payment of UGX 54.000.000/= on to the account of the 2<sup>nd</sup> respondent for tea seedlings supplied by the Applicants to the farmers in Zombo District.
2. The payment of UGX 54.000.000/= by the 1<sup>st</sup> respondent be made on the  
25       joint account of the applicants.



3. Any further dealings or claims made with the Applicants pertaining supply of tea seedlings to the 1<sup>st</sup> respondent from the Nursery bed located in Gwok Nyeri village, Akaa sub-county, Zombo District should be in the name of the Applicants and not the 2<sup>nd</sup> Respondent.

5 The grounds upon which this application is premised are set out in the affidavit of Jungiera Geoffrey, the supplementary affidavit of Mugabe Gregory and the Notice of Motion and are briefly that;

1. An Operation Wealth Creation Programme was rolled out in Zombo District by NAADS and as a result of the NAADS Programme, nursery operators were invited to supply tea seedlings to farmers in Zombo District and payment was to be made by NAADS.
2. The applicants showed interest in supplying the tea seedlings and eventually organized a meeting on 8/05/2017 to discuss the tea seedling project.
3. The applicants supplied 135,000 tea seedlings to Zombo District Local Government in the name of Okello Jimmy under contract No. NAADS/SUPLS/2020-21/00009 TEA dated 04<sup>th</sup> August 2020.
4. The applicants remitted money on their separate mobile money accounts to Okello Jimmy for facilitating the tea project. Okello did not proportionately remit the money to the Applicants for the first supplies made in 2019 and as a result, a criminal case was instituted against him.
5. Okello wrote a letter to NAADS dated 20<sup>th</sup> October 2020 requesting payments to be effected on his personal account and that of the second applicant.
6. The 1<sup>st</sup> applicant together with Mr. Nahabwe Elly who was sent by the 2<sup>nd</sup> applicant approached Okello with the Power of Attorney to sign while he was on remand but Okello declined.



The 1<sup>st</sup> respondent filed an affidavit in reply on the 13<sup>th</sup> of April 2021 and denied all the averments in the application as not being within their knowledge. The 2<sup>nd</sup> respondent filed an affidavit in reply dated 12<sup>th</sup> April 2021 and denied ever being an agent of the 1<sup>st</sup> applicant and ever receiving money from the 1<sup>st</sup> applicant. He stated  
5 that he personally supplied Zombo District Local Government with 135,000 tea seedlings worth Shs 54.000.000/=.

### Representation

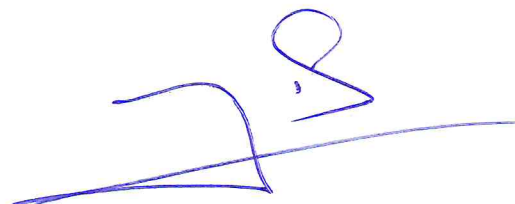
At the hearing of the application, Mr. Henry Odama of M/s Odama & Co. Advocates appeared for the applicants while the respondents were unrepresented.

### 10 Preliminary objection

The respondents, in their submissions raised a preliminary objection that the applicants improperly commenced the suit by notice of motion. Under S. 19 of the Civil Procedure Act, every suit shall be instituted in the manner prescribed by the Rules and under O.4 r 1(1) of the Civil Procedure Rules, every suit shall be instituted  
15 by presenting a plaint to court.

Counsel relied on the decision in **General Parts (U) Ltd and Another Vs NPART [2006]1 HCB 23** in which the Supreme Court held that *it is trite that in civil matters the only mode of instituting suits are by plaint, originating summons and petition. A notice of motion is not an alternative mode of instituting any type of suit.* Counsel further relied on the Supreme  
20 Court decision in **Hannington Wasswa & Another Vs Maria Onyango Ochola & 3 Others [1994] IV KALR 98** where it was held that *it is improper to commence proceedings to challenge the alleged acts of fraud by notice of motion because the standard of proof in fraud must be high. This therefore requires an ordinary suit where witnesses may be cross-examined.*

The applicant seeks to halt a payment of Shs. 54.000.000/= to the account of the 2<sup>nd</sup>  
25 respondent for tea seedlings supplied by the applicants to the farmers in Zombo



District. The applicant however alleges fraud on the part of the 2<sup>nd</sup> respondent for having failed to remit the money for the first supplies made in 2019. The applicants claim to have supplied the seedlings and at the same time, the 2<sup>nd</sup> respondent, in his affidavit in reply, claimed to have personally supplied the seedlings. This nature of  
5 dispute would ideally require evidence on who supplied the seedlings and whether the applicants had nominated the 2<sup>nd</sup> respondent as their agent. This suit cannot, therefore, be brought by Notice of Motion which relies on affidavit evidence.

Rules of procedure are handmaidens of justice and ought to be followed as far as practicable. The applicants should have filed the suit under Order 4 rule 1 of the Civil  
10 Procedure Rules by presenting a plaint. The preliminary objection raised by the respondents is hereby upheld.

This application is hereby dismissed.

I so order.

15 Dated and Delivered this 31<sup>st</sup> day of March 2023.



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Isah Serunkuma

20 JUDGE