

THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA

AT MENGO

BEFORE: HON JUSTICE G.W. KANYEIHAMBA, J . S . C .

CIVIL APPLICATION NO. 2/2002

ARISING OUT OF COURT OF APPEAL CIVL APPEAL NO. 26

**OF 2001 AND RELATED APPLICATION NOS. 12,13,1,4,17 AND 30 OF
2002**

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**HIGH COURT CIVIL SUIT NO. 173 OF 2000 AND RELATED
APPLICATIONS NO. 1852 AND NO. 1873 OF 2000.**

B E T W E E N

EAST AFRICAN GENERAL INSURANCE CO. LTD
REPRESENTED BY M/S KATENDE & SSEMPEBWA & CO.
ADVOCATES:..... 1ST APPLICANT

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EAST AFRICAN GENERAL INSURANCE CO. LTD
REPRESENTED BY M/S SEBALU & LULE & CO.
ADVOCATES1ST RESPONDENT

ATTORNEY GENERAL:.....2ND RESPONDENT

M/S SAM K. NJUBA ADVOCATES2ND APPLICANT

REPRESENTING CERTAIN SHARES IN THE APPLICANTS APPLICATION.

RULING OF THE COURT :

This is an application by way of motion under rule 41 of the Rules of this court, 1966. The applicant seeks an order from this court to amend the judgment dated 6th day of December, 2001 brought before my brother, Hon Justice Oder, J.S.C., as a single judge of this court and agreed to and signed by counsel representing all the parties. The application seeks that the said consent judgment be amended in its clauses (c), and (d), in order to reflect the desire expressed by the majority post 1972 EAGEN shareholders as contained in their resolutions (c), (d) and (e) passed at their general meeting held on 18.12.2001. The applicant also asked that there be no costs following the disposal of this application.

Mr. Mukiibi, holding a brief for Sam Njuba appeared for the 2nd applicant and Prof. Ssempebwa and Mr. Katende represented the 1st applicant while the Attorney General was represented by Mr. Masiko, learned Principal State Attorney. The application was supported by the affidavit of Haji Lubega Kaddanabbi and opposed by that of Maria Wamala. A little more will be said about these two affidavits, later in this ruling.

Prof. Ssempebwa raised a preliminary objection. He contended that, this court has no jurisdiction to hear an application seeking to vary a consent judgment entered into and approved by another single judge. Both Prof. Ssempebwa and Mr. Katende. respectively made submissions on lack of jurisdiction of this court.

Having given the background to the consent judgment, Prof. Ssempebwa contended that any party wishing to challenge a consent judgment approved by a single judge of this court can only do so by making a reference to a panel of three justices in accordance with the rules of court. Counsel cited s. 9 (2) of the Civil Procedure Act and Rule 51 (1)(b) of the Rules of this Court. Mr. Katende submitted further that the jurisdiction of the court is only granted by statute as amplified by the rules and therefore the application was incompetent.

Mr. Mukiibi for the 2nd applicant disagreed with the submissions of Prof. Ssempebwa and Mr. Katende. He contended that Rule 53 of the Rules of this Court gives the jurisdiction to vary a consent judgment approved by a single judge. Mr. Masiko chose not to address court.

Having heard Counsel for both parties and reviewed the law applicable, I was satisfied that the application was improperly before me. I therefore dismissed it with costs to the applicant represented by M/s Katende and Ssempebwa & Co. Advocates; I intimated that I would give reasons at a date to be notified to the parties. I do so now.

REASONS:

In my opinion, where a consent judgment agreed to by all the parties to it and entered into court and approved by a judge of this Court, in this case, my learned brother, Justice Oder J S C . it is not permitted for another single judge to vary that consent judgment. It is also my opinion that it would not be possible for the single judge who approved the consent judgment to do so especially where one or more of the parties to that consent judgment objects to the variation or amendment.

The submission by learned counsel for the 2nd applicant that Rule 53 (1) of the Rules of this court gives jurisdiction to this court is, in my opinion, untenable Rule 53(1) provides,

"(1) an order made on an application heard by a single judge may be varied or rescinded by that Judge or any Judge of the court or three judges of that court on the application of any person affected by the order, if

- (a) the order was one extending the time for doing an act, otherwise than to a specific date, or***
- (b) the order was one permitting the doing of some act, without specifying the date by which the act was to be done, and that the person on whose application the order was made has failed to show reasonable diligence in the matter.***
- (c) Any order made on an application to the court may similarly be varied or rescinded by the court."***

Clearly, none of the provisions of this rule applies to the facts and circumstances of the application before me.

On the other hand, s.9(2) of the Judicature Statute, 1966 provides,

"Any person dissatisfied with the decision of a single Justice in the exercise of a power under subsection (1), is entitled to have the matter determined by a bench of three Justices of the Supreme Court which may confirm, vary or reverse the decision. "

And Rule 51 (1) of the Rules of this Court provides,

"Where under subsection (2) of section 9 of the Judicature Statute, 1966, any person who is dissatisfied with the decision of a single Judge of the court

(a).....

(b) in any civil matter wishes to have any order, direction or decision of a single judge, discharged or reversed by the court, the applicant may apply for it informally to the Judge at the time when the discretion is given, or by writing, to the Registrar within seven days after that date.

At the hearing by three Judges of the Court of an application previously decided by a single judge, no additional evidence shall be adduced except with the leave of the court."

The affidavits of both, Haji Lubega Kaddunabbi for the 1st applicant and Maria Wamala for the 2nd applicant, did not comply with rule 51 (2) of the rules of this Court. In any event, it is clear from both provisions of the statute and of rule 51 (b) that this court consisting of a single judge has no jurisdiction to hear and determine this application. It was for these reasons, that I dismissed the application with costs.

Dated at Mengo this 27th Day of March 2002

JUSTICE G W. KANYEIHAMBA
JUSTICE OF THE SUPREME COURT