

THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

CORAM: HON. JUSTICE L.E.M. MUKASA-KIKONYOGO, DCJ
HON. JUSTICE C.N.B. KITUMBA, JA
HON. JUSTICE C.K. BYAMUGISHA, JA

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CIVIL APPEAL NO. 63/2002

J.V. PATEL:..... APPELLANT
VERSUS

- 1. MUYANJA M. MBABAALI**
- 2. 3M CORPORATION LTD :.....RESPONDENTS**

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**(Appeal from the Ruling and order of the Hon. Mr. Justice
Rugadya Atwoki in the High Court of Uganda at Mbale dated
the 27th August, 2001 in High Court Civil Suit No. 27 of 1998)**

JUDGEMENT OF L.E.M. MUKASA-KIKONYOGO, DCJ

This appeal arises out of the Ruling in High Court Civil Suit No. 27 of 1998 of the High Court sitting at Mbale delivered on 21-08-01.

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J.V. Patel the appellant jointly and severally sued Muyanja Mbabaali and 3M Corporation Ltd, hereafter to be referred to as the 1st and 2nd respondents. The appellant's claim from the respondents was recovery of U.S.D 6500 at that time the equivalent of Ug. Shs. 8.000.000/.

The background of the appeal is that in 1993, the appellant was the Managing Director of a company known as African Textile Mills, abbreviated as ATM, in which the Government of Uganda had shares. The 1st respondent was the Chairman, Board of Directors of the 2nd respondent. In 1991 ATM entered into an agreement with the 2nd respondent to supply it with specified industrial chemicals. Pursuant to that contract the 2nd respondent supplied and delivered to ATM industrial chemicals valued at shs. 43.200.753/=. Apparently due to financial constraints ATM paid for the chemicals by post dated cheques
10 which the appellant as the Managing Director and signatory, signed. Due again to lack of funds the said cheques were dishonored by the bank.

The 1st respondent reported the matter to the Police which led to the arrest of the appellant as the signatory on the cheques. To avoid further inconvenience and imprisonment the appellant raised USD 6500 and made one bounced cheque good. He paid it to the 1st respondent in person and it was credited to his personal account in the Nile Bank at Jinja Road. ATM being a parastatal body was, in October
20 1993 closed and the Government of the Republic of Uganda took over management of its affairs under its Privatization Program. It (the Government of Uganda) also undertook to pay all liabilities of ATM including the debt owed to the respondents.

On 22/09/95, the Government of Uganda, through the said Privatization Unit in the Ministry of Finance paid the 2nd respondent a total of shs. 46,386,632/= which was the balance of the principal sum and interest at the rate of 10% per month due to it.

Subsequent to the payment it was the contention of the appellant that
30 since the entire debt owing to the respondents was paid the appellant was entitled to recover U.S.D 6500 paid to the 1st respondent. The respondents disputed the claim; hence, the appellant filed this suit in

the High Court. His prayer was for Judgement in his favour for USD 6500 or Ug. Shs. 8.000.000/= with interest and costs.

When the suit was called for hearing counsel for the respondents raised three preliminary issues two of which were overruled but one sustained. It was contended by counsel for the respondents that the appellant had no cause of action against them. Upon hearing the addresses of the counsel for both parties the learned trial judge held the view that it was difficult to see how the appellant would have made
10 payment in a personal capacity in respect of a company in which he was a chief executive. Similarly as the Chairman of the Board of Directors of the 2nd respondent, the 1st respondent could not have been liable unless there was evidence to show that he had received the money in his personal capacity. If as argued the failure by the respondents' to declare USD 6500 amounted to overpayment, as they were paid twice, the proper party to sue would have been the Attorney General as the Government Legal Representative and perhaps jointly with the Privatization Unit. The appellant would then have been called as a witness. Further, the learned trial judge held that even if the
20 appellant had paid the money personally, for the benefit of ATM, as the Managing Director, his claim lay with the successor of ATM, namely, the Privatization Unit and not the respondents. As far as the learned trial judge was concerned the appellant had no locus standi in this case to claim USD 6500 from the respondents.

Aggrieved by the decision of the High Court the appellant instructed his counsel, Mr. Dagira to lodge this appeal to this court. It is based on the following three grounds:-

30 **“(i) The learned trial judge erred in law when he struck out the appellant’s plaint on the ground that it did not disclose any cause of action**

(ii) The learned trial judge erred in law when he held that the plaintiff lacked locus standi to bring the original suit against the defendants

(iii) The decision complained against has occasioned a substantial miscarriage of Justice.

10 **The Court was prayed to allow the appeal, set aside the Ruling of the High Court, grant an order to remit the suit to the High Court for trial on its merits and make provisions for costs of this appeal”.**

Mr. Dagira opted to argue the three grounds together because they overlap.

It was his contention that the respondents were liable to refund USD 6500 which the appellant paid to 1st respondent at the Central Police Station after his arrest. When the debt which ATM owed to the respondents was eventually paid, the 2nd respondent acknowledged receipt of that money. However, USD 6500 was not declared. It was submitted that USD 6500 was paid in the appellant’s individual capacity because he had been arrested by the Police. To avoid criminal liability he raised USD 6500 and paid it to 1st respondent. Counsel argued that the learned trial judge failed to realize the predicament the appellant was in. Criminal liability is personal liability; a company cannot be arrested and imprisoned. The 2nd respondent did not declare the payment when its debt was paid in full. As far as Mr. Dagira was concerned the appellant was entitled to claim his money. Counsel relied on holding No.3 of Auto Garage & Others vs. Motokov no. 3 1971 EA 514 where the East African Court of Appeal held as follows:-

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“Plaint may disclose a cause of action without containing all the facts constituting the cause of action provided that the violation by the defendant of a right plaintiff is shown”.

He, therefore, submitted that the appellant’s plaint as it stands has enough material to disclose a cause of action. It was a miscarriage of justice on the part of the learned trial judge to strike out the respondent’s plaint without giving him a hearing. The appeal should
10 be allowed and the suit remitted to the High Court for a proper trial on merit.

Mr. Wakida, learned counsel for the respondents, opposed the appeal. The critical issue for him which this court had to determine is the capacity in which the money was paid. The appellant should not have paid for a company because it is common knowledge that it is different from a director. Its debts are not the debts of directors. The cheques which bounced were not issued by the managing director but ATM. The trial judge, to Mr. Wakida, was justified to hold that it was hard to
20 see how the appellant came into the picture. Mr. Wakida submitted that the trial judge rightly found that the appellant had no locus standi. He invited this court to dismiss the appeal with costs.

I will adopt the same approach as both counsel for the parties did by evaluating the three grounds together. As it was rightly argued by Mr. Wakida the critical issue on which this appeal hinges is to determine the capacity in which the USD 6500 was paid by the appellant and received by the respondents. This court has to decide whether the said USD 6500 was paid by the appellant in his individual capacity and
30 not as the managing director of ATM which was privatized. It is correct as submitted by Mr. Wakida; a managing director is different from a

company. He could not, therefore, claim on its behalf and he cannot be liable for its debts.

However, it must be conceded that each case must be decided on its facts. In the instant case the respondents do not dispute the fact that the appellant paid U.S.D 6500 to the 1st respondent. It is also not denied that all the outstanding debts owed by ATM had been fully paid. However, there is no explanation by the respondents as to what happened to USD 6500 paid to 1st respondent. The respondents did
10 not declare it as overpayment.

Instead it is traced in the 1st respondent's personal account in Nile Bank Ltd, Main Branch, Jinja Road Kampala, Uganda. This is supported by Annexure 3 to the plaint at page 12 of the record of proceedings. In annexure No. 2 at page 11 the appellant requests Mr. E. Mugabi of Texbeufra Consult Ltd,

P. O. Box 4126, Kampala ***“to pay shillings Eight million (8.000.000) on my account to Mr. Mbabaali of 3M Corpco Ltd without fail tomorrow 15-09-93”.***

20 The above documentary evidence was never denied or rebutted by the respondents. The money paid by the appellant was raised in his personal capacity as shown by evidence (see Annexures 2, 3 on page 11, 12 & 13) and paid to 1st respondent as an individual. Following Mr. Wakida's line of argument the money paid to the 1st respondent and deposited on his personal account could not be looked for into the company's account. The Attorney General and the Privatization Unit Program were not the right parties to be sued. The appellant had no cause of action against them. They were not liable to refund the money to the appellant but the respondents who received and kept it,
30 in the 1st respondent's personal account.

With regard to issue of consideration as it was submitted by Mr. Dagira it was important to understand the predicament, the appellant was in. He was under arrest and threatened with imprisonment. Although the cheques which had bounced were issued by ATM, the latter could not be arrested and detained. As a signatory the appellant was, instead, arrested. He, therefore, made one of the bounced cheques good to gain his freedom. The money he paid to the 1st respondent was not ATM's but he had raised it personally. He did not owe any money personally to any of the respondents. Consideration did not arise
10 because in my view this was a case of **"Money had and received"** which had to be accounted for by the recipients.

I accept the submission by Mr. Dagira that the learned trial judge wrongly struck out the plaint on the ground that it did not disclose a cause of action. The appellant had a claim against the respondent which the trial court should have allowed him to establish. On the documentary evidence on record the learned trial judge should not have ruled that the appellant had no locus standi. Clearly he had. It was, hence, a denial of justice for the appellant not to be given
20 opportunity to prosecute his case whatever the outcome.

For the aforesaid reasons I would allow this appeal, set aside the Ruling of the High Court and remit the suit to the High Court for trial on merits. I would also order the respondents to pay costs of this appeal and in the court below.

Since both my learned sisters C.N.B. Kitumba J.A and C.K. Byamugisha J.A agree with the conclusions reached the appeal is hereby allowed with the proposed orders.

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Dated at Kampala this ...18th day ofMay2005.

L.E.M. MUKASA-KIKONYOGO
HON. DEPUTY CHIEF JUSTICE