

**THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA AT KAMPALA**

**CORAM: HON. JUSTICE G.M. OKELLO, JA
HON. JUSTICE A. TWINOMUJUNI, JA
HON. JUSTICE C.N.B. KITUMBA, JA**

CIVIL APPEAL NO.31 OF 2004

**1. GEOFFREY ORYEM
2. STEVEN BALISANYUKA
3. DANIEL MULUTA
4. JACK WASWA
5. ROBERT MUGISHA.APPELLANTS**

VERSUS

APOLLO HOTEL CORPORATION LIMITED RESPONDENTS

[Appeal from the Ruling and Orders of the High Court (Commercial Division) (Arach-Amoko, J) at Kampala dated 29th October 2002 in Misc. Appl. No.486/2002]

Legislation referred to:

1. *Public Enterprises Reform and Divestiture Statute, 1993*
2. *Companies Act (Cap 85)*
3. *Apollo Hotel Corporation Act 1967*

JUDGMENT OF TWINOMUJUNI, JA

This is an appeal from the ruling of the High Court of Uganda (Commercial Division) in which the learned trial judge struck out the plaintiffs suit on the grounds that the respondent (who was the defendant in the High Court) was wrongly sued as a party to the suit.

The background to the suit was that the appellants were employed in various capacities between 1990 and 1997 in Kampala Sheraton Hotel, then owned by Apollo Hotel Corporation by virtue of Apollo Hotel Corporation Act of 1967.

In 1997, the appellants were dismissed from service on grounds they considered unlawful. In 2002, they filed a Civil Suit HCCS No.165 of 2002 against Apollo Hotel Corporation Limited claiming for payment of terminal benefits, general damages for wrongful dismissal with interest on the decretal sums and costs of the suit.

When the suit was called for hearing in the High Court, counsel for Apollo Hotel Corporation Limited argued a preliminary point of law to the effect that the Company was wrongfully sued as a party to the suit because they never employed or dismissed the appellants and did not own Apollo Hotel as owners or successors to Apollo Hotel Corporation. The learned trial judge accepted this submission and struck off the plaint on the grounds that it did not disclose any cause of action against the respondent because the Hotel at all material times belonged to Uganda Government; hence this appeal.

There are five grounds of appeal as follows:-

- 1. The learned trial judge erred in law and fact when she failed to properly evaluate the evidence before her, thus arriving at a wrong conclusion i.e. that the respondent was improperly sued.**

- 2. The learned trial judge misdirected herself and erred in law and fact in holding that Apollo Hotel Corporation Ltd, the respondent's predecessor did not own or operate Sheraton Hotel but that it was owned by the Government of the Republic of Uganda and operated by Sheraton Overseas Management Corporation as agent of Government.**
- 3. The learned trial judge erred in law and fact in failing to hold that Apollo Hotel Corporation Ltd, the respondent's predecessor being a scheduled Corporation established by Act 6/67 to own, administer, control and manage Apollo Hotel, - was the true employer of the appellants and not the Government of the Republic of Uganda.**
- 4. The learned trial judge misdirected herself on matters of law and fact in placing undue significance on the Hotel management Agreement and the letters of appointment, and thereby arrived at a wrong decision.**
- 5. The trail judge erred in law and fact in failing to hold that the government of the Republic of Uganda had executed an illegal agreement with the appellants which was later ratified by Apollo Hotel Corporation Ltd when it allowed the appellants to work as its employees.**

During the hearing before us, Mr. Siraji Ali, learned counsel or the appellants abandoned the first ground of appeal. He argued grounds 2 & 4 of appeal together and grounds No.3 and 5 also together. I propose to deal with the appeal in the same order it was presented to us by learned counsel for appellants.

GROUND 2 & 4

- “2. The learned trial judge misdirected herself and erred in law and fact 20 in holding that Apollo Hotel Corporation Ltd, the respondent’s predecessor did not own or operate Sheraton Hotel but that it was owned by the Government of the Republic of Uganda and operated by Sheraton Overseas Management Corporation as agent of Government.**
- 4. The leaned trial judge misdirected herself on mattes of law and fact in placing undue significance on the Hotel Management Agreement and the letters of appointment, and thereby arrived at a wrong decision.**

The simple issue raised by these two grounds of appeal is whether Sheraton Hotel was owned by Uganda Government as found by the learned trial judge or whether it is owned by Apollo Hotel Corporation Limited as claimed by the appellants.

Learned counsel for the appellants submitted that Apollo Hotel was created under the authority of Parliament and vested under the ownership of Apollo Hotel Corporation by the Apollo Hotel Corporation Act, 1967. The situation remained the same despite the fact that the name of the Hotel was changed to Kampala International Hotel and later to Kampala Sheraton Hotel. In 1997 Apollo Hotel Corporation Limited was registered and it took over all the assets and liabilities of Apollo Hotel Corporation. In his view, the Hotel is still the property of Apollo Hotel Corporation Limited. It was therefore erroneous for the trial judge to hold that it belonged to Uganda Government basing herself on a management agreement entered into between the Government and Sheraton Overseas Management Corporation in which the Uganda Government was described as the “owner” and Sheraton Overseas Corporation as the “Operator” of Kampala Sheraton Hotel.

In reply, Dr. Joseph Byamugisha, learned counsel for the respondent submitted that the trial judge was right to rely on the 1997 agreement between the Uganda Government and Sheraton Overseas Management Corporation. The agreement was introduced in evidence by the appellants and they should not be allowed to disown the documents merely because some of its provisions are adverse to their case. He pointed out that the trial judge did not rely on that alone. She also relied on the appointment/letters of the appellants and their termination letters

which showed that the respondent did not have a hand in any of those activities and that it was the agents of Uganda Government which were responsible.

I now turn to the resolution of the 2 and 4 grounds of this appeal. I think there is no dispute that a prominent hotel situated in Kampala City and known as KAMPALA SHERATON HOTEL is the same hotel formerly known as Apollo Hotel Corporation by the Apollo Hotel Corporation Act, 1967. By 1993 when the Government of Uganda enacted the Public Enterprises Reform and Divestiture Statute, 1993, to enable it to divest itself from the total or partial ownership of public enterprises, the Hotel was still referred to as Apollo Hotel. The 1st schedule to the Statute names the Hotel as Apollo Hotel and Places it among the public enterprises in which the State was required to retain a majority shareholding. Section 14 of the Statute provides:

- “14(1). Shares of the State in a public enterprise held in the name of a person described as Minister shall be held by the person for the time being holding the office of the Minister.**
- (2). Notwithstanding any other enactment or rule of law, it shall not be necessary to complete or register a transfer of shares of the kind referred to in subsection (1) of this section consequent 20 upon a change in the person holding the office of Minister by reason only of that change.**
- (3). The Minister responsible for finance or the responsible Minister may, at any time, by-written notice to the Managing Director or other chief executive of a Public enterprises, authorise, on such terms and conditions as are specified in the notice, such person as the Minister thinks fit, o act as the Minister’s representative at any or all of (he meetings of shareholders, and any person so authorised shall be entitled to exercise the same powers on behalf of the Minister as the Minister could have exercised *if* present in person at the meeting or meetings.”**

Section 25 of the Statute provides:-

“25(1) Subject to this Statute the Companies Act shall apply to the divestiture of enterprises under this Statute.

(2) Where a public enterprise is subject to divestiture under class II, III or IV of the First Schedule to this Statute and the enterprise is not already a public limited liability company under the Companies Act, the enterprise shall be registered as a public, limited liability under that Act for the purpose of effecting the divestiture with the respective shareholding as prescribed by section 20 of this Statute.

(3) Any divestiture required by this Statute in respect of any enterprise, shall be carried out in accordance with the enactment under which the enterprise exists or under the Companies Act, as the case may be.”

Following the enactment of this Statute, the Government of Uganda, which wholly owned Apollo Hotel Corporation, had to comply with the Statute by divesting its shares in accordance with sections 14 and 25 quoted above. In consequence, a public corporation limited by shares known as APOLLO HOTEL CORPORATION LIMITED was floated wider the companies Act with the objects of:

“3. a) To take over under the Public Enterprises Reform and Divestiture Statute 1993 by transfer by the Minister the proprietary interest of the Government of the Republic of Uganda in and also all the rights, assets, property, Obligation and liabilities of the Apollo Hotel Corporation, which is established under the Apollo Hotel Corporation Act 1967.

- b) To acquire by transfer by the responsible Minister, with the approval of the divestiture and Reform Implementation. Committee, under the Public Enterprises Reform, and Divestiture Statue 1993 all rights, assets, property, Obligations and liabilities of Apollo Hotel Corporation.**
- c) To own and manage the Apollo Hotel as a five star hotel.**
- d) To carry on the business of hoteliers, restaurateurs, caterers and to provide accommodation, entertainment, and any other facilities usually provided by first class hotels to all comers at such prices as may be determined from time to time without any special or previous contract, unless there are reasonable grounds to refuse the said accommodation or other facilities.**
- e) To purchase, acquire or hold for any estate immovable property reasonably necessary for the purpose of conducting its business or of housing or providing amenities or its staff.”**

Section 4 and 5 of the Memorandum of Association of Apollo Hotel Corporation Limited provided:-

- “4. The liability of the members is limited.**
- 5. The share capital of the company is shs.28, 000,000,000/= divided into 28,000,000 shares of shs.1, 000/= each with power to the company to increase or reduce the said capital and to issue any part of its capital, original or increased, with or without any preference priority or special privileges or subject to any postponed rights or to any conditions.**

We the several persons whose names, addresses and descriptions are subscribed, apply for the registration of the company under the Companies Act (Cap 85) in accordance with section 25(2) and S.24(1) of the Public Enterprises Reform and

Divestiture Statue 1993 and take the number of shares in the capital of the Company set opposite our respective names.

Names, Postal Addresses and Occupations of Subscribers	Number of shares taken by each Subscriber	Signatures of Subscribers
1. HON. BRIG. MOSES ALI 2ND DEPUTY PRIME MINISTER & MINISTER OF TOURISM, WILDLIFE AND ANTIQUITIES P.O BOX 4142 KAMPALA	1	
2. HON. J. MAYANJA- NKANGI. MINISTER OF FINANCE P.O. B0X4142, KAMPALA		

DATED THIS 27TH DAY OF February 1998.”

I have endeavoured to quote these provisions at length to show how the entire shareholding of the Government of Uganda moved from Apollo Hotel Corporation to Apollo Hotel Corporation Limited, On 27 February 1998, Apollo Hotel became owned by Apollo Hotel Corporation Limited with the majority shareholding of the company owned by Uganda Government. In the year 2002 when this suit was filed in the High Court by the appellants, Apollo Hotel was legally owned by Apollo Hotel Corporation Limited as legal successors to Apollo Hotel Corporation. The undisputed fact that the government of Uganda owned majority shares in Apollo Hotel Corporation Limited did not mean that Government of Uganda owned Apollo Hotel [or Sheraton Hotel as it is currently named.]

Therefore, under the law, the respondent owned or is deemed to have owned and operated Apollo Hotel (Sheraton Hotel) at the time the appellants were recruited and dismissed from employment of the Hotel. It is also true that the majority shareholder in Apollo Hotel Corporation Limited - the Uganda Government - has purported and acted as the owner of the Hotel during which it signed a management agreement with the Sheraton Overseas Management Corporation in respect of the Hotel. However, I have no doubt in my mind that the Government of Uganda is a mere shareholder in Apollo Hotel Corporation Limited, which company is the owner of the hotel. All the officers who recruited the Appellants or dismissed them did so under the management agreement to which Sheraton Overseas Management Corporation became a party only as the agents of the owner of the Hotel. I find that despite various statements on the appointment and dismissal letters to the contrary, the Hotel has at all material times been the property of the respondent and not Uganda Government.

In the result, I would hold on these two grounds of appeal that the trial judge was in error when she held that the Hotel belonged to Uganda Government and not the respondent.

GROUND3&5

Regarding ground No.3. I agree with the appellants that the respondent was the employer of the appellants. The reasons have been spelt out in my consideration of grounds 2 and 4 of the Memorandum of Appeal above.

I do not think it is necessary to make any finding on the complaint raised on ground No.5 of the Memorandum of Appeal. I think the Government of Uganda was not well advised to assume ownership of Sheraton Hotel when its true owner was Apollo Hotel Corporation and

its successor, the Apollo Hotel Corporation Limited. The capacity in which it entered a management contract with Sheraton Overseas Management Corporation is highly questionable.

CONCLUSION

I would hold that the leaned trial judge erred to hold that Sheraton Hotel did not belong to the respondent. Though Uganda Government held a significant share of the respondent, it is the respondent, and not the government, which owns the hotel. It is therefore the respondent who is the right defendant in HCCS No.165 of 2002. Because of confusion introduced in the ownership question by the Management contract between Uganda Government and the Sheraton Overseas Management Corporation, the appellants may consider naming both the respondent and the Government as defendants. Nevertheless, the defendant was the proper defendant in the suit.

I would allow this appeal with costs to the appellants. I would remit the file to the High Court to continue with the trial on merits.

Dated at Kampala this 30th day of August 2006.

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Hon. Justice A.Twinomujuni

JUSTICE OF APPEAL

THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA

AT KAMPALA

CORAM: HON JUSTICE G.M. OKELLO, JA
HON JUSTICE A. TWINOMUJUNI, JA
HON LADY JUSTICE C.N.B KITUMBA, JA

CIVIL APPEAL NO 31 OF 2004

BETWEEN

1. GEOFFREY ORYEM
STEVEN BALISANYUKA
3. DANIEL MULUTA:..... APPELLANTS
4. JACK WASWA
5. ROBERT MUGISHA

2.

AND

APOLLO HOTEL CORPORATION LIMITED:..... RESPONDENT

(An appeal from the Ruling and Orders of the High Court (Commercial Division Arach-Amoko, J) at Kampala, dated 29th October, 2002 in Misc. Appl. No 486/2002)

JUDGMENT OF G.M. OKELLO, JA.

I have had the opportunity to read in draft the judgment prepared by Twinomujuni, JA I fully agree with him that for the reasons h has given, the appeal must succeed.

I have nothing useful to add. As Kitumba, JA also agrees, the appeal is hereby allowed on the terms proposed in the lead judgment.

Dated at Kampala this 30th day of August 2006.

G.M. OKELLO

JUSTICE OF APPEAL

THE REPUBLIC OF UGANDA
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*[Appeal from the Ruling and Orders of tile High Court Commercial Division.) Arach, J.) at
Kampala dated 29th October 2002om Misc. Application No. 486/2002]*

JUDGEMENT OF C.N.B. KITUMBA, JA.

I have read the judgment in draft of Twinomujuni, JA. I concur.

Dated at Kampala this 30th day of August 2006.

C.N.B. Kitumba

JUSTICE OF APPEAL