

THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

**CORAM: HON. JUSTICE A.E.N MPAGI BAHIGEINE, DCJ
HON. JUSTICE A. TWINOMUJUNI, JA
HON. JUSTICE S.B.K. KAVUMA, JA**

CIVIL APPLICATION NO.149 OF 2010
(Arising out of Civil Appeal No.02 of 2004)

NATIONAL SOCIAL SECURITY FUND.....APPLICANT

V E R S U S

ALCON INTERNATIONAL LTD.....RESPONDENT

RULING OF THE COURT:

This is an application by Notice of Motion stated to be filed under the following laws:-

- (a) Rules 2(2), 36, 43 and 44 of the Judicature (Court of Appeal) Rules Directions.
- (b) Section 98 of the Civil Procedure Act.
- (c) Sections 34(2) (a)(i)(ii)(iv)(vi) and 34(b) of the Arbitration and Conciliation Act, and
- (d) Section 11 of the Judicature Act.

The application seeks for the following orders that:-

- 1) The Court recalls and sets aside its judgment in Civil Appeal No.02 of 2004 dated 25th August 2009.
- 2) The Court sets aside the ruling and orders of Hon. Justice Stella Arach Amoko dated 14th June 1999 in the High Court Miscellaneous Application No.417 of 2001.
- 3) The Court sets aside the Final Award of Justice E. Torbar in the matter of Arbitration between Alcon International Ltd vs National Social Security Fund and Edward Sentongo dated 29th March 2001 and filed in the High Court on 7th November 2001.
- 4) Costs be provided for.

The motion is supported by an affidavit deponed by one Vincent B. Ssekkono, stated to be the current Chairman of the applicant, deponed to on 25th August 2010.

Mr. Ssekkono narrates what he was told to be the history of HCCS No.1255 of 1998 by Mr. David Nambale, a Company Secretary of applicant. Mr. Ssekkono depones:-

- “1. I am the Chairman, Board of Directors of the applicant, a corporation established by the National Social Security Fund Act.**
- 2. The applicant has a statutory duty to collect and manage contributions, invest contributions and pay benefits to its members, the workers.**
- 3. The applicant invited bids for construction of a building to be known as Workers House at Plot 1 Pilkington Road, Kampala as an investment for the workers.**
- 4. The applicant subsequently entered into a contract with Alcon International Limited, a company incorporated in Kenya with a registered office at Enterprise Road, Industrial Area, P. O. Box 47160 Nairobi, Kenya. A copy of the building contract is annexed hereto and marked “A”.**

5. The applicant subsequently entered into a co financing loan agreement with the said contractor for erection of the said building. A copy is annexed hereto and marked “B”.
6. on 8th June 1996, the applicant and the said contractor entered into a further supplementary agreement providing an amended schedule of conditions of the building contract. A copy is annexed hereto and marked “C”.
7. The applicant subsequently terminated the building contract.
8. Consequent to the termination, the respondent filed High Court Civil Suit No.1255 of 1998 against the applicant seeking damages for breach of contract, and an application for an injunction.
9. The respondent asserted a cause of action for breach of contract by describing itself as the company with which the applicant had entered the building contract. Copies of the plaint and claim are annexed hereto marked “D” and “D1” respectively.
10. On 14th June 1999 Hon. Justice Stella Arach Amoko stayed the suit and referred the dispute to arbitration. A copy of the order is annexed hereto marked “D2” hereto.
11. on 29th March, 2001, retired Justice E. Torgbor awarded the respondent damages of US \$8,858,469 with interest at 6% per annum, and the award was filed in the High Court on 7th November, 2001. A copy of the award is annexed hereto and marked “E”.
12. The applicant applied to set aside the award in High Court Arbitration Cause No.4 of 2001 but the arbitration award was upheld by Hon. Justice Stella Arach Amoko on 30th September 2003. Copies of the ruling and order are annexed hereto and marked “F” and “F1” respectively.

13. The applicants filed Civil Appeal No. 02 of 2004 against the ruling of Justice Stella Arach Amoko which was dismissed by this honourable Court on 25th August 2009. A copy of the ruling is annexed hereto and marked "G".
14. In August, 2010, Mr. David Nambale, the new corporation secretary of the applicant, brought to my attention a ruling in Civil Application No.50 of 2007 – Alcon International Limited vs Kampala Associated Advocates. A certified copy of the ruling is annexed hereto marked "H".
15. In the said ruling, this honourable Court found as follows:
 - (a) that the respondent's directors crookedly registered multiple companies with similar names and manipulated the names in order to deceive entities they dealt with, and in this instance, to win a tender for construction of Workers House;
 - (b) that the respondents' directors' conduct amounted to a criminal conspiracy.
 - (c) that the respondent is a company incorporated in the United Kingdom and registered in Uganda.
 - (d) that the Kenyan company with whom the applicant signed a building contract was not a party to the appeal, the High Court Civil Suit and arbitration proceedings from which it arose.
 - (e) that M/s Kampala Associated Advocates acting on behalf of Alcon Kenya (the contractor named in the agreement) had no locus standi in the appeal as their client was not a party.
16. At all material times during the suit, arbitration and the appeal, the applicant relied on the respondent's representations and believed it was dealing with Alcon International Limited, a company incorporated in Kenya and with whom it had entered the contract.
17. The respondent therefore perpetrated misrepresentation against the applicant in the following particulars:

- (a) **Claiming the credit and passing off as Alcon International Limited, a company incorporated in Kenya, whereas not. Copies of its certificates of incorporation and registration are annexed hereto and marked “I” and “J” respectively.**
 - (b) **Claiming damages for breach of a building contract to which it was not a party.**
 - (c) **Procuring an arbitration award for breach of a contract to which it was not a party.**
 - (d) **Prosecuting the suit, arbitration proceedings and the appeal by holding out as Alcon International Limited of Kenya whereas it was Alcon International of the U.K., a stranger.**
18. **I am advised by the said corporation secretary that consequently, the following rulings and judgements arising out of the arbitration award were procured through misrepresentation, abuse of court process, are null and void, and contrary to public policy.**
19. **The applicant was not a party to Civil Application No.50 of 2007.**
20. **The judgment of this court in Civil Appeal No.20 of 2004 in favour of the respondent would have been different if the ruling in Civil Application No.50 of 2007 had not been overlooked.**
21. **It is in the interests of justice and public policy that the judgement of this court confirming an arbitration award of US\$ 16,360,875 of hard earned workers money to a stranger be set aside.**
22. **I swear this affidavit in support of an application to set aside the judgement of this honourable court in Civil Appeal No. 02 of 2004 dated 25th August 2009, the ruling of Hon. Justice Stella Arach Amoko dated 30th September 2003 and the Final Award in the Matter of Arbitration between Alcon International Limited vs. National Social Security Fund and H.W. Sentongo dated 29th March 2001.**

23. **Whatever is stated herein is true to the best of advice rendered to me by the Corporation Secretary of the Applicant and information the sources of which are disclosed.”**

The Notice of Motion is opposed by M/s Tumusiime, Kabega & Co. Advocates, counsel for the respondent whose main defence to the motion is that:-

- (a) Civil Application No.149 of 2010 is resjudicata
- (b) Civil Application No.149 of 2010 is subjudice.

The defence is supported by the affidavit sworn by Mr. Kultar Singh Hanspal, who is the Managing Director of the respondent, deponed to on 11th September 2010 and states as follows:-

- “1. That I am an adult male Canadian of sound mind and the Managing Director of Alcon International Ltd and therefore have capacity to affirm to this affidavit.**
- 2. That I have read Mr. Vincent B. Ssekkono’s affidavit in support of the above application and respond thereto as follows.**
- 3. That I have no personal knowledge of and I have never met or ever had any dealing with either Mr. Vincent B. Ssekkono or Mr. David Nambale in all my life.**
- 4. That the applicant invited tenders for the construction of Workers’ House, Kampala and Alcon International Ltd submitted bids and won the tender to complete the Workers’ House, Kampala and signed contract therefore, annexed hereto as “A”.**
- 5. That I as Managing Director of Alcon International Ltd signed the contract, annexture “A” for and on behalf of the Contractor.**
- 6. That at the time of tendering and signing the contract, Annexture “A”, I was based in Nairobi and on winning the tender and signing the contract, I agreed with the Directors of Alcon International Ltd that I should move**

to Uganda and execute the contract under Alcon International Ltd which was re-registered in Uganda from United Kingdom.

7. **That this fact of assigning the contract from Alcon International Ltd of P. O. Box 47160 Nairobi to Alcon International Ltd, of P.O. Box 9598 Kampala, Plot No.5, 2nd Street Industrial Area, Kampala was communicated to National Social Security Fund's Board and Management and was well known to them and I am totally surprised that the applicant now pretends not to know this fact, almost 13 years after purporting to terminate the building contract.**

8. **That contrary to what is contained in paragraphs 9, 15, 16, 17, 18, 19, 20 and 21 of the applicant's affidavit, the applicant at all the material times of the contract:-**
 - (a) **deposited the Certificate of Title for Plot 1 Pilkington Road, Kampala with Alcon International Ltd Uganda vide annexure "B";**
 - (b) **paid all the money due at the time to the contractor to Alcon International Ltd, Uganda in the Company bank accounts in Orient Bank, in Uganda and all the Letters of Credit were opened through our bank account in Uganda, annexure "C";**
 - (c) **the applicant never paid any money to Kenya or to any Kenyan Bank;**
 - (d) **the applicant's correspondence was only with the respondent, Alcon International Ltd in Uganda, annexure "D";**
 - (e) **the Co-financing loan was received by the applicant from the respondent and all the repayments were made to the respondent in Kampala;**
 - (f) **the applicant addressed the Termination Notices and Final Letter to the respondent and physically delivered, under Recorded Delivery to the respondent at Plot 5, 2nd Street Industrial Area, Kampala and not to Alcon International Ltd, Kenya Enterprises Road, Industrial Area, Nairobi, annexure "E";**

- (g) the applicant complained to the Police in Uganda and caused me and Rajesh Kent to be prosecuted for the alleged theft of curtain walling moneys as Managing Director and Director, respectively of the respondent, in Uganda, annexure “F”;
 - (h) the Labour Office charged me and Rajesh Kent as Directors of Alcon International Ltd, Uganda for non payment of Workers’ House project workers and the directors of Alcon International Ltd, Kenya were not charged, annexure “G”;
 - (i) The applicant on termination of the contract took the respondent’s equipment, machinery, tools, plant and materials which the respondent had on site.
9. That contrary to what is contained in paragraphs 15, 16, 17, 18, 19, 20 and 21, the applicant cannot pretend not to know that it was the respondent who constructed Worker’s House from the 4th basement (foundation) to the 20th level and further the applicant has not stated who else constructed Workers’ House, if it was not the respondent.
10. That further to foregoing paragraph, once the applicant acknowledges that it is the respondent and not Alcon International Ltd of Kenya, who constructed Workers’ House, then the respondent is entitled to claim damages for breach of contract and legal costs from the applicant and contrary to what is stated in paragraphs 17(d) and 21 of the applicant’s affidavit, the respondent is not a ‘stranger’ to the execution of the contract works in issue.
11. That contrary to what is stated in paragraph 16 of the applicant’s affidavit, Mr. Vincent B. Ssekkono, was not on the applicant’s Board or Management during the time HCCS No.1258 of 1998, Arb. Cause No.4 of 2001, Civil Appeal No.2 of 2004 were heard and disposed of and could not have ‘relied on the respondent’s representations or believed it was dealing with Alcon International Limited, a Company incorporated in Kenya.’

12. **That contrary to what is contained paragraph 17 of the applicant's affidavit, the respondent filed HCCS No.1255 and a Claim in Arbitration in 1999 and has since then defended Arbitration Cause No.4 of 2001, High Court Civil Appeal No.2 of 2004, Court of Appeal and Civil Appeal No.15 of 2009, Supreme Court for its dues for work done for the applicant and not paid for, for unpaid loans extended to the applicant, for plant materials, tools and equipment which the applicant grabbed on the site, loss of profit and costs.**
13. **That I know that no person or company, other than the respondent, executed the works contract for Worker's House and consequently no person or company is entitled to claim or bring a suit against the applicant and indeed no third party has brought any claim against the applicant.**
14. **That while the applicant has denied the respondent its dues, the applicant has for the last 10 years collected rent and gained financially from the works executed by the respondent.**
15. **That contrary to what is stated in paragraph 21 of the applicant's affidavit, it is in the interest of justice and public policy in Uganda that a contractor, (respondent), who has executed a contract should be paid in a timely manner for the work it has done and should not be denied its dues and its plant, materials tools and equipment for 14 years while the employer (applicant) collects rent from Workers' House.**
16. **That ever since the respondent was shut out of the suit premise or site, the applicant's management and staff stole and sold off all the respondent's plant, tools, machinery, equipment and materials which included two (2) top of the range Towers Cranes that hitherto graced the Kampala skyline, two(2) top of the range concrete batching plants, two (2) caterpillar wheel loaders, Four – ten tonne Tipper trucks, Generators, Water Pumps, etc valued at**

over US\$2,780,000 and all efforts by the respondent to recover them from the respondent have failed, now 10 years after completion of the Workers' House project.

17. That I am informed by my counsel, Tumusiime, Kabega & Co. Advocates, which information I verily believe to be true that;

- (a) HCSS No.1255 of 1998, (Alcon International Ltd vs NSSF and Anor) was stayed and referred to Arbitration by Hon. Justice Stella Arach on 14th June 1999 and the applicant filed a Notice of Appeal against the said order but never prosecuted the appeal;**
- (b) the arbitral proceedings between Alcon International Ltd vs. NSSF and Anor, were concluded and an Award was made on 21st March 2001;**
- (c) the applicant herein filed Miscellaneous Application No.417 of 2001 (NSSF and Anor vs Alcon International Ltd) to remove the arbitrator and abandoned the application;**
- (d) the applicant filed in the High Court Arbitration Cause No.4 of 2001 (NSSF and another versus Alcon International Ltd) and it was heard and dismissed with costs;**
- (e) the applicant filed Civil Appeal No.2 of 2004, Court of Appeal (NSSF and Anor vs Alcon Internationality) which was heard and dismissed with costs and;**
- (f) the applicant has filed Civil Appeal No.15 of 2009 in the Supreme Court of Uganda (NSSF and Anor Alcon International Ltd) which is pending for hearing.**

18. That I am informed by my counsel, Tumusiime, Kabega & Co. Advocates, which information I verily believe to be true that in the pleadings mentioned in paragraph 17 above, to wit, HCCS No. 1255 of 1998, Arbitral proceedings, Arbitration Cause No.4 of 2001, Civil Appeal No.2 of 2004 and Civil Appeal No.15 of 2009, the applicant's pleadings were grounded on the claim that the respondent

obtained and sustained the contract through fraud and bribery and all the Courts and the Arbitral Tribunal below the Supreme Court have pronounced themselves on this issue and its one of the issues pending before the Supreme Court of Uganda in Civil Appeal No. 15 of 2009, grounds 10 and 11 of the Memorandum of Appeal annexure “H” hereto and all the matters and issues raised in this application have been raised before, heard and disposed of in the Courts below.

- 19. That it is true the applicant was not party to Civil Application No.50 of 2007 but the applicant’s representatives attended the said proceedings in the Court of Appeal but the applicant did not apply to be joined or suited and as soon as the Ruling of the Court was received on 18th February 2008 my counsel Tumusiime, Kabega & Co Advocates duly wrote to the applicant and delivered a copy of the said Ruling to the applicant, who has for the last 2½ years ignored or sat on the said Ruling.”**

When the application came before us for hearing, Mr. Enos Tumusiime, learned counsel for the respondent raised preliminary objections to the application.

The first objection raised the issue of resjudicata. The second objection was that the matters on which the applicant seeks judgment are already pending before the Supreme Court of Uganda but the hearing was put off in that court on the application of the applicant to allow it time to first seek for a remedy in this court. The matters are contained in Supreme Court Civil Appeal No.15 of 2009 which had been fixed for hearing on 22nd October 2010 but was decaused as aforementioned.

This ruling is not a resolution of matters listed by the applicant in the Notice of Motion as the reasons that give rise to the application. This ruling is only an answer to the preliminary objections raised by the respondent. If resolved in favour of the respondent, then the application will have failed and will be dismissed. If resolved in favour of the applicant, the court will proceed to hear the merits of the application and dispose of it accordingly.

There is a matter which was not directly argued before us in court but which is raised in the conferencing notes filed by the respondent. Learned counsel for the respondent argued that the provisions of the Court of Appeal Rules, the Judicature Act and the Arbitration and Conciliation Act relied upon by the applicant as giving this court jurisdiction to hear the application now before us are not applicable and therefore the Court has no jurisdiction to entertain it. This appears to us to raise an objection that the court has no powers to entertain this matter and being a jurisdiction issue, the court must pronounce itself on it before dealing with other matters raised in the preliminary objection by counsel for the respondent. Though the applicant was given ample notice of this objection, it was not addressed either in the applicant's conferencing notes or during the hearing of the preliminary objection

We shall therefore first address it before dealing with other matters raised in the preliminary objection. The issue is this:-

Does;

- (i) Rules 2(2), 36, and 44 of the Judicature (Court of Appeal Rules) Directions
 - (ii) Section 98 of the Civil Procedure Rules Act
 - (iii) Sections 34(2) (a)(i)(ii)(iv)(vi) and section 34(b) of the Arbitration and Conciliation Act
 - (iv) Section II of the Judicature Act
- Or
- (v) Any one of the above;

Confer jurisdiction on this court to entertain this Civil Application No.149 of 2010? In this regard, we consider each of them in turn.

Rule 2(2) Court of Appeal Rules:

This rule gives this court powers:

“to make such orders as may be necessary for attaining the ends of justice or to prevent the abuse of such a court, and that power shall extend to setting aside judgments which have been proved null and void after they have been passed and shall be exercised to prevent the abuse of court the process of any court cause by delay.”

However, this rule is not applicable where:-

- (a) The court is functus officio
- (b) Where the matter being raised could have been disposed of during the disposal of the appeal in this court but was never raised.
- (c) As in this case, the applicant seeks to set aside judgments of other lower courts arrived at in proper exercise of their powers and upheld by this court [Resjudicata]
- (d) Where the same matter are pending in the Highest Court of the land for final disposal [subjudice]

The issues of res judicata and subjudice will be dealt with later in this ruling. On the issue of this court being Functus officio, this application arises from Court of Appeal Civil Appeal No.2 of 2004. That appeal was disposed of in this Court on 25th August 2009. The applicant has since filed Civil Appeal No.15 of 2009 in the Supreme Court where it is still pending.

We note that Civil Application No.50 of 2007 which was decided when the appeal was still pending in this Court did not make any alteration as to the parties to the suit. However, even if it had done so, the applicant had opportunity to challenge the ruling of this court and three years down the line it has not done so. The applicant could have raised some of the matters raised in this application before the hearing of Civil Appeal No.2 of 2004 in this Court. It did not do so. Therefore, we must hold that the applicant had opportunity to raise these matters in the Court of Appeal. The court is now Functus Official and Rules 2(2) Court of Appeal Rules is not applicable.

Rules 36, 43 and 44 Court of Appeal Rules.

For ease of reference, we reproduce the three rules of this Court hereunder as follows:-

Rule 36: Correction of errors.

- “(1) A clerical or arithmetical mistake in any judgment of the court or any error arising in it from an accidental slip or omission may, at any time, whether before or after the judgment has been embodied in a decree, be corrected by the court concerned, either of its own motion or on the application of any interested person so as to give effect to what was the intention of the court when judgment was given.**
- (2) An order of the court may at any time be corrected by the court, either of its own motion or on the application of any interested person, if it does not correspond with the judgment or ruling it purports to embody or, where the judgment or order has been corrected under subrule (1) of this rule, with the judgment or order as so corrected.”**

Rule 43: Form of applications to court.

- (1) Subject to sub rule (3) of this rule and to any other rule allowing informal application, all applications to the court shall be by motion, which shall state the grounds of the application.**
- (2) A notice of motion shall be substantially in form A in the First Schedule to these Rules and be signed by or on behalf of the applicant.**
- (3) This rule shall not apply –**
- (a) to applications made in the course of a hearing, which may be made informally; or**
 - (b) to applications made by consent of all parties, which may be made informally by letter.**

Rule 44: Supporting documents.

- (1) Every formal application to the court shall be supported by one or more affidavits of the applicant or of some other person or persons having knowledge of the facts.**

- (2) **An applicant may, with the leave of a judge or with the consent of the other party, lodge one or more supplementary affidavits.**
- (3) **Application for leave under sub rule (2) of this rule may be made informally.**
- (4) **Every formal application for leave to appeal shall be accompanied by a copy of the decision against which it is desired to appeal and, where an application has been made to the High Court for leave to appeal and the application has been refused, by a copy of the order of the High Court refusing the application.”**

Rule 36 above is self – explanatory. It covers clerical or arithmetical mistakes which may arise from accidental slips and omissions or where the order of the court does not correspond with the judgment or ruling of the court it purports to embody. It cannot cover the situation, as in this application, where the applicant is seeking for orders that:-

- (1) The court recalls and sets aside its own judgment in Civil Appeal No.02 of 2004 dated 25th August 2009.
- (2) The court sets aside the ruling and orders of the High Court in the H.C. Mis. Appl. No.417 of 2001.
- (3) The Court sets aside the Final Award of an Arbitration Tribunal filed in the High Court on 7th November 2001 which was in favour of the respondent.

Rules 43 and 44 are rules of procedure giving guidelines as to the form applications before this court should take and the supporting documents that should be filed to support the applications. These rules do not give this court any powers to entertain applications arising from appeals where the Court of Appeal is functus officio as in the instant case.

Section 98 Civil Procedure Act

This section provides:-

“Nothing in this Act shall be deemed to limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.”

This section is the Court of Appeal version reproduced in Rule 2(2) of the Court of Appeal Rules with the additional power,

“to set aside judgments which have been proved null and void after they have been passed.”

Everything we have already said about Rule 2(2) of the Court of Appeal Rules and whether it grants this court powers to entertain this application is equally applicable to s.98 C.P.A. The additional power to “set aside judgments which have been proved to be null and void after they have been passed” does not arise here as no such judgments were pointed out or produced in these proceedings.

Section 34 of the Arbitration and Conciliation Act.

This section sets out circumstances in which an arbitral award may be set aside.

- (2) An arbitral award may be set aside by the court only if –**
 - (a) the party making the application furnishes proof that –**
 - (i) a party to the arbitration agreement was under some capacity;**
 - (ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, if there is no indication of that law, the law of Uganda;**
 - (iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was unable to present his or her case;**
 - (iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the reference to arbitration or contains decisions on matters beyond the scope of the reference to arbitration; except that if the decisions on matters referred to arbitration can be separated from those not so referred, only that part of the arbitral award which contains decisions on matters not referred to arbitration may be set aside;**
 - (v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless that agreement was in conflict with a provision of this Act from**

- which the parties cannot derogate, or in the absence of an agreement, was not in accordance with this Act;**
- (vi) the arbitral award was procured by corruption, fraud or undue means or there was evident partiality or corruption in one or more of the arbitrators; or**
- (vii) the arbitral award is not in accordance with the Act;**
- (b) the court finds that -**
- (i) the subject matter of the dispute is not capable of settlement by arbitration under the law of Uganda; or**
- (ii) the award is in conflict with the public policy of Uganda.**
- (3) An application for setting aside the arbitral award may not be made after one month has elapsed from the date on which the party making that application had received the arbitral award, or if a request had been made under section 33, from the date on which the request had been disposed of by the arbitral award.”**

First of all, sections (1) and (2) of the Act (supra) are not applicable to the arbitral proceedings in which the award was made. Therefore, they are superfluous in this application.

Secondly, it will be recalled that the relevant arbitral award in this case was filed in the High Court on 7th November 2001. The applicant then filed application No. 4 of 2001 to set aside the Award. The High Court considered the application and ruled in favour of the respondent. The applicant appealed to this Court against that ruling in Civil Appeal No.o2 of 2004. When that appeal was dismissed on 25th August 2009, the applicant filed in Supreme Court Civil Appeal No.15 of 2009 which is still pending in that Court. It is clear beyond any doubt that any application to set aside the arbitral award in the High Court and the Court of Appeal would be resjudicata. To the extent that the matter is also pending in the Supreme Court, the matter is subjudice and for both reasons it cannot be entertained by this court.

Section 11 of the Judicature Act

The section provides:-

“An appeal shall lie to the Court of Appeal from decisions of the High Court prescribed by the Constitution, this statute or any other law.”

This section prescribes the jurisdiction of the Court of Appeal but does not give the Court powers to hear applications like this one, where:-

- (a) The Court is functus officio.
- (b) Some orders sought are resjudicata.
- (c) All the orders sought are pending consideration in the Supreme Court Civil Appeal No.15 of 2009 and would be considered subjudice in any other Court other than the that court.

CONCLUSION

It was stated in the body of this application that it was brought under Rules 2(2), 36, 43 and 44 of the Judicature (Court of Appeal) Rules Directions, Section 98 of the Civil Procedure Act, Sections 34(e)(i)(ii)(iv)(vii) and 34(b) of the Arbitration and Conciliation Act and section 11 of the Judicature Act.

We have examined each of the above provisions and we have come to the conclusion that none of them gives this court jurisdiction over matters that the applicant could have raised when he had the opportunity to do so in this court e.g. matters allegedly raised by the courts ruling in Civil Application No.50 of 2007. Furthermore, these provisions do not give this Court jurisdiction to entertain matters arising from an appeal where the court is already functus officio. Finally, the provisions do not give this Court powers to entertain an application that seeks orders to consider matters that this court and other lower courts have already pronounced themselves on [res judicata] or are pending to be pronounced upon by the Supreme Court of Uganda [subjudice]. Application No.149 of 2010 is therefore incompetent and is hereby struck off with costs to the respondent.

Dated at Kampala this...**06th** ...day of ...**May...2011**.

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Hon. Justice A.E.N. Mpagi Bahigeine
DEPUTY CHIEF JUSTICE.

.....
Hon. Justice A. Twinomujuni
JUSTICE OF APPEAL.

.....
Hon. Justice S.B.K. Kavuma
JUSITCE OF APPEAL.