THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL DIVISION)

MISCELLANEOUS APPLICATION NO. 0030 OF 2024
ARISING FROM CIVIL SUIT NO. 0266 OF 2021

1. QUALITY MILK DIARIES LIMITED
2. KIGOYE BURUHANI
3. SWALLEH BUSINGYE
4. NANFUKA FATIHA MUWANGA :::::::::::::::::::::::::::: APPLICANTS

VERSUS

MANGO FUND INC. :::::::::::::::::::::::::::: RESPONDENT

(Before: Hon. Justice Patricia Mutesi)

RULING

Background

This application is brought under **Section 33** of the **Judicature Act Cap 13, Section 98** of the **Civil Procedure Act Cap 71** and **Order 9 rule 12** and **Order 52 rules 1, 2** and **3** of the **Civil Procedure Rules S.I. 71-1** seeking orders that:

1. The judgment on admission vide Civil Suit No. 266 of 2021 entered by this Honourable Court be set aside.
2. The respondent be ordered to give proper accountability for the proceeds of the sale of the motor vehicles pledged as security by the Applicant.
3. The suit be set down for hearing on the merits inter-parties.
4. In the alternative without prejudice to the above, the suit be dismissed with costs to the Applicants.
5. The costs of the application be provided for.

Briefly, the grounds of this application are that:

1. On 23rd March 2023, this Court entered a judgment on admission in Civil Suit No. 266 of 2021 in favour of the Respondent against the Applicants.
2. The Applicants were ignorant of the facts pertaining to how much they had so far paid to the Respondent at the time judgment on admission was

entered since proper reconciliation of the extended credit facility had not been conducted.

3. On 24th June 2019, the Respondent recalled the loan of UGX 433,850,000 extended to the 1st Applicant.
4. The Applicants have since repaid the entire loan to the Respondent in cash (UGX 340,000,000) and through 2 motor vehicles that had been pledged as security all valued at UGX 200,000,000 which the Respondent sold off without rendering any accountability to the Applicants.
5. It is in the interests of justice that an order setting aside the judgment on admission in HCCS No. 266 of 2021 be issued by this Court.

The application is supported by an affidavit affirmed by Swalleh Busingye, the 3rd Applicant who is also a director in the 1st Applicant. He told the Court that, on 24th June 2019, the Respondent issued a demand notice for the entire outstanding balance on the investment amount/loan inclusive of interest in the sum of UGX 433,950,000 to the Applicants. On 29th July 2019, a cash deposit of UGX 40,000,000 was paid to the Respondent's Bank account in Stanbic Bank.

He stated that, additionally, on 1st August 2019, by RTGS, UGX 200,000,000 was paid from the 1st Applicant's bank account in Centenary Bank to the Respondent. In May and June 2023, the Applicants paid a total of UGX 60,000,000 by cash deposit to the Respondent's bank account. On 18th September 2023, a further payment of UGX 40,000,000 was made by RTGS from the 1st Applicant's bank account in Exim Bank to the Respondent's account in Stanbic Bank. Mr. Busingye also stated that the Respondent also sold 2 motor vehicles jointly valued at UGX 200,000,000 which had been pledged as security for the loan. Proceeds of the sale have not been accounted for.

Finally, Mr. Busingye stated that, at the time the judgment on admission was entered, some information was not available as reconciliation was ongoing and all the Applicant's efforts to have joint reconciliation with the Respondent were flatly rejected. Following the reconciliation, the Applicants are certain that they have paid the Respondent UGX 340,000,000 in cash through bank transfers and deposits and that the Respondent has sold off the 2 said vehicles jointly valued at UGX 200,000,000. All this implies that the Respondent has since recovered the entire recalled loan of UGX 433,950,000.

The Respondent opposed the application through an affidavit in reply sworn by Robinah Biribonwa, its General Manager. She told the Court that the Applicants are estopped from alleging ignorance of material particulars because they have always been in touch with her personally asking for more time within which to repay the loan, but all in vain. She clarified that the 2 motor vehicles sold were in poor mechanical condition and that they were sold with the Applicant's consent and knowledge. That the agreed price for the vehicles was UGX 55,000,000 but the purchaser only paid UGX 53,500,000 because the balance of UGX 1,500,000 was payable only upon the receipt of the log books from the 1st Applicant's directors. Further that the received sum of UGX 53,500,000 was duly reflected in the loan statement.

Ms. Biribonwa stated that the Applicant's claim that the vehicles were valued at UGX 200,000,000 is false and inconsistent with their prior claim in paragraph 3(f) of their written statement of defence that the same vehicles were valued at UGX 480,000,000. Upon execution of the Consent Judgment, the Applicants, through the 3rd Applicant, issued 30 Centenary Bank post-dated cheques to settle the debt but the same have never borne any fruit. Finally, Ms. Biribonwa stated that this application is only another effort to delay payment of the debt which was already admitted on Court record. She added that the Applicants have since even proposed payment plans during the execution proceedings that arose from the judgment on admission.

The Applicant filed an affidavit in rejoinder affirmed by Swalleh Busingye. He claimed that the Loan Ledger Card extracted from the Loan Performer System and the Excel version of the Loan Repayment Status were all manipulated and do not reflect a correct quantum of outstanding debt. For instance, the said Loan Ledger Card falsely includes outstanding legal fees of UGX 16,019,151 which were never justified by the Respondent in any way. He stated that the motor vehicles were in good mechanical condition before sale and that they were sold off without the Applicants' consent and notice. He clarified that the value of UGX 200,000,000 is not a falsehood since it is close to the total value of UGX 189,000,000 which the Respondent attached to both vehicles in the schedule attached to the Investment Agreement.

Mr. Busingye also stated that he has since discovered that more information on the 1st Applicant loan payment status which was not readily available to the

Applicants at the time the Judgment on Admission was entered, to the effect that a further UGX 14,000,000 was paid on 25th October 2019 and another UGX 14,000,000 was paid on 25th December 2019 to the Respondent. This implies that the Respondent has been paid in cash a total sum of UGX 368,000,000 by Applicant. If the proceeds of the purported sale of motor vehicles are factored in, the Respondent has since recovered UGX 421,500,000 out of the UGX 443,950,000 recalled investment loan, inclusive of the gross profit share allocation, which implies the would be outstanding is UGX 22,450,000 and not UGX 211,152,034.

Finally, Mr. Busingye stated that the Respondent misled the Applicants into admitting the debt yet they did not have all the information on how much they had paid prior to the said Consent and judgment on admission. He added that they were pressurised to sign the consent in exchange for clearance to enable them borrow from other potential lenders.

Issue arising

Whether the judgment on admission entered by this Honourable Court in HCCS No. 0266 of 2021 should be set aside.

Representation and hearing

At the hearing, the Applicants were represented by Mr. Derek Musiime of M/S Shoebill Advocates while the Respondent was represented by Mr. Arthur Mwebesa of M/S A. Mwebesa & Co. Advocates. I have considered the materials on record, the submissions of the parties and the laws and authorities cited.

Determination of the issue

Whether the judgment on admission entered by this Honourable Court in HCCS No. 0266 of 2021 should be set aside.

Order 13 rule 6 of the Civil Procedure Rules S.I. 71-1 allows any party at any stage of a suit, where an admission of facts has been made, either on the pleadings or otherwise, to apply to the Court for such judgment or order as upon the admission he or she may be entitled to, without waiting for the determination of any other question between the parties. Upon such application, the court may make such order, or give such judgment, as it deems just.

The object of Order 13 rule 6 is to enable a party to obtain judgment speedily at least to the extent of the admissions. Such admissions can be made on the pleadings or verbally because of the use of the word "otherwise" in the rule. The rule is for the benefit of both parties. However, before the court can act under the rule to enter judgment, the admission of the claim must be clear and unambiguous. The power given to court to enter judgment on admissions is a discretionary one that must be exercised judiciously and circumspectly. (See **Juliet Kalema v William Kalema, CACA No. 95 of 2003** cited with approval in **Brian Kaggwa v Peter Muramira, CACA No. 26 of 2009**.)

A trial judge must be satisfied that the admission of a claim on the basis of which a judgment should be entered under Order 13 rule 6 of the CPR is obviously clear, unambiguous and unequivocal. Once this is the position, such admission could even override a denial in the pleadings, including what was initially an issue, since the use of the word "otherwise" in Order 13 rule 6 infers that such admission of fact can be deducted from outside the pleadings. See **Nevia Co. Ltd v Biersdorf AG, CACA No. 172 of 2014**.

Furthermore, it is trite law that a plain and obvious case, even if established after substantial argument or analysis of documents, entitles a plaintiff to judgment on admission. Before entering judgment on admission, the admissions must be plain, obvious and clearly readable because they must result in judgment being entered. They must be obvious on the face of them without requiring a magnifying glass to ascertain their meaning. They must leave no room for doubt that the parties crossed from the state of negotiations and crystalised into a definite consensus. The circumstances must be such that, if, upon a purposeful interpretation of the admissions of fact, the case is plain and obvious that there is no room for discretion to let the matter go for trial, then nothing is to be gained by having a trial. Also see **Choitram v Nazari [1976 – 1985] EA 53**.

The main issue which this Court is called upon to determine in this application is whether the Court exercised its discretion properly when it entered a judgment on admission against the Applicants in the main suit under Order 13 rule 6 of the CPR. Before entering that judgment on admission on 23rd March 2023, the Court noted that a draft Consent Judgment had been endorsed by all the parties and their advocates and filed on the Court record by June 2022. The Court had ordered the Applicants to appear and confirm their signatures in the draft

Consent Judgment. Mr. Derek Tusiime, counsel in personal conduct of the Applicants' case had not appeared but he had instead briefed another advocate, Mr. Nobert Nyakuni, to appear and ask for an adjournment. The said counsel reported that the Applicants preferred to appear in the presence of Mr. Derek Tusiime and, accordingly, they snubbed the 23rd March 2023 session. After hearing from both counsel, the Court entered a judgment on admission against the Applicants on the basis of Mr. Nyakuni's confirmation of the Applicant's acceptance of all the terms of the draft Consent which they had duly signed. The Court regrettably acknowledges that the absence of the Applicants during the 23rd March 2023 session in which the judgment on admission was entered meant that there remained some doubt as to their acknowledgment and admission of the claim in the main suit.

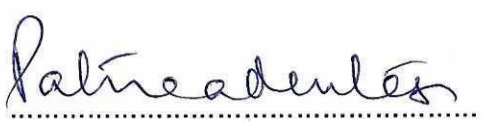
The absence of the Applicants in that session made it impossible for them to confirm their signatures in the draft Consent Judgment to the Court. The draft Consent Judgment, though endorsed by the Applicants in acknowledgment of the claim, remained inchoate without their attendance in Court to confirm its contents. For these reasons, the Applicant's acknowledgment and admission of the claim in the plaint remained equivocal.

Consequently, this application succeeds and I make the following orders:

i. The judgment on admission entered by this Honourable Court in Civil Suit No. 0266 of 2021 is hereby set aside.

ii. Civil Suit No. 0266 of 2021 shall be set down for hearing inter-parties.

iii. Costs of this application shall abide by the outcome of the main suit.



Patricia Mutesi

JUDGE

(19/04/2024)