

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

MISC. APPLICATION NO 491 OF 2008

(Arising from High Court Misc. Application Cause No. 112 of 2008)

AYA INVESTIVIENTS (U) LTD:..... APPLICANT

VERSUS

M/S KIBEEDI & CO. ADVOCATES:..... RESPONDENT

BEFORE: THE HONOURABLE MR. JUSTICE YOROKAMU BAMWINE

RULING [NO.1]

When this application came up for hearing on 03-11-2008, learned counsel for the respondent, Mr. Walubiri made a prayer to court. The prayer is that Mohammed Mohammed Hamid, a deponent of an affidavit dated 29-10- 2008 and one Mutashwera Ntarirwa, be cross-examined on their affidavits. He also prayed that an order be made that the Voucher Book in which the cash/cheque Payment Vouchers dated 5-11-2007 and 7-11-2007 respectively were extracted be produced for the respondent's examination. The respondent also wants two voucher books used immediately before and immediately after the impugned one. The application was opposed by learned counsel for the applicant. He reasoned that the main purpose of the instant application is to demonstrate to court that the applicant was not given opportunity to be heard when the Advocate — Client's bill of costs came up for taxation. That if the application is allowed, then what counsel is praying for will be considered. By way of a brief background to the application, an Advocate-Client bill of costs, the subject matter in HCMA NO. 112 of 2008 was taxed and allowed ex-parte by the Registrar of this

court on 20-5-2008. The decree subsequently obtained gave rise to garnishee proceedings and a warrant of attachment of the land and development thereon comprised in LRV 3556 Folio 8 at Nakasero in Kampala.

By these proceedings, the applicant seeks to demonstrate to court that the decree was irregularly obtained, that it is bad in law and a nullity.

The instant application is for leave to be granted to the applicant to file an appeal to the Judge of the High Court of Uganda out of time against a decision of the Taxing Officer made on 20-05-2008 taxing the respondent's Advocate — Client Bill of Costs ex-parte and allowing it at USD 2,448,500. The respondent's prayers herein are a matter preliminary to the hearing of the said application. I shall therefore restrict my comments to the two prayers herein and not the competence or lack of it of the application itself.

It would appear that in the course of perusing the applicant's Notice of Motion and the documents accompanying it, the respondent came across documents whose source it holds suspect. He submitted the same to a Handwriting expert, Mr. Mutashwera Ntarirwa, who has since advised that the signature attributed to one Muzamiru Kibeedi is not his. The handwriting expert's opinion is attached to his affidavit dated 31-10-08.

I am a little puzzled by counsel's intention to have the said expert summoned for cross-examination by the respondent when it is the respondent who invited him to determine the authenticity of the documents. I would have thought that the respondent's reliance on the report is enough, subject of course to the applicant's right to seek his cross-examination on it. For now, I see no reason to warrant summoning him for cross-examination by the party that engaged him. Time will tell whether there will be any need for summoning him at all. As for Mohammed Mohammed Hamid, a deponent of an affidavit in support of the application, given that he alluded to the documents which the respondent disputes, there is reason for him to be summoned for cross-examination purposes before the application is heard in earnest. I say so because a party to a suit is entitled to raise an objection to the competence of his adversary's pleadings during the hearing of the suit or before hearing

thereof. If the impugned vouchers are suspect, the application which relies on them would also be suspect. They would be an illegality and in the words of Bingham LJ in **Saunders & anor Vs Edwards & anor [1987] 12 ALL ER 651 at 665:**

“Where issues of illegality are raised, the courts have to steer a middle course between two unacceptable positions. On the one hand, it is unacceptable that any court of law should aid or lend its authority to a party seeking to pursue or enforce an object or agreement which the law prohibits. On the other hand, it is unacceptable that the court should, on the first indication of unlawfulness affecting any aspect of a transaction, draw up its skirts and refuse all assistance to the plaintiff, no matter how serious or how disproportionate his loss to the unlawfulness of his conduct.”

I agree.

For the reason stated above, I am unable to fault the procedure adopted by learned counsel for respondent. After the applicant’s alleged irregularity in the main application is investigated and the respondent’s too, court will determine the way forward in the matter. Accordingly, the said Mohammed Mohammed Hamid shall, before the hearing of this application, be summoned for cross-examination purposes on his affidavit and its attachments. For this reason, the applicant shall through the said Hamid, be ordered to produce the voucher book in which the two impugned cash/cheque payment vouchers were extracted plus the voucher books used immediately after the impugned one, for whatever that evidence is worth.

It is so ordered.

Costs herein shall abide the outcome of the main application.

Order: The applicant's official, Mr. Hamid, shall be summoned for cross-examination as ordered on 17-11-2008 at 2.30pm.

Yorokamu Bamwine

JUDGE

10-11-2008

10-11-2008

Mr. Lule. G}

Mr. Nkurunziza. D} for applicants

Mr. Walubiri for Respondent

Respondent's Mr. Kibeedi present

Court: Ruling delivered

Yorokamu Bamwine

JUDGE

10-1 1'.08

Mr. Lule: We shall be seeking summoning and cross-examination of the Handwriting expert, Mr. Ntarirwa. We shall also be tendering in evidence another report of an expert.

Mr. Walubiri: We shall be seeking cross examination of Esther Semakula, besides Hamid. She is actually the one we had in mind, not Ntarirwa.

Court: So be it. The handwriting expert, Mr. Ntarirwa, shall be summoned for cross-examination of the applicants on 17/11/08. In the event that the applicants also file an opinion of another expert, that expert shall be available for cross-examination by the respondents on the same day. Likewise Mr. Mohammed Mohammed Hamid and Esther Semakula shall, as

already ordered appear for cross-examination on their affidavits on 17/11/08. Court shall thereafter decide whether or not to act on the evidence on record on the basis of written submissions or otherwise.

Yorokamu Bamwine

JUDGE

10-11-08