

- d) An order of prohibition, prohibiting the implementation of the third party agency notice made by the Commissioner Domestic Tax Department of Uganda Revenue Authority by the respondents against the applicant
- e) Damages be awarded to the applicant for the wrongful acts of the respondents and his staff/ officer under their control or command.

The application is supported by the affidavit of Mr. Obed Mwebesa as the legal manager of the applicant and the grounds are enumerated in the Notice of Motion as follows:-

1. That on 16th June 2009 and 24th November 2009, His Excellency the president of Uganda wrote to the Hon. Minister of Justice and the Attorney General, about a decision reached upon on 35th March 2009, to compensate the applicant and the applicant was in turn to withdraw the suit against the Attorney General and on 5th December 2010, the applicant indeed withdrew the suit another four cases that were pending in the High Court of Uganda in conformity with the compensation terms in the consent judgment dated 6th October 2010
2. That on 6th October 2010, the applicant and the Attorney general executed a consent judgment, wherein inter alia, the compensation sums were not to be subjected to any levies, taxes or reduced by the defendant or its agents in any way
3. That on 21st June 2011, the applicant made a report to the Auditor General, detailing among other things how the estimated assessments made by the respondent, in respect of the said compensation for the applicant and sent to the Solicitor General included businesses and companies that had no relevance to the compensation.
4. That the basis of the applicant's dissatisfaction is that the investigations department of URA and the respondents deliberately or without reasonable cause failed to consult the applicant before reaching a final tax position which if it had been considered the investigations as regards the third party agency notice issued by him/ her affecting the applicant that is monies amounting to **20,121,239,094/=** (Twenty billion one hundred twenty one million two hundred thirty nine thousand and ninety four shillings only) and the said third party agency notice is in utter contempt of the a consent judgment between the applicant and the Attorney General dated 6th October 2010, and the prior directives of His Excellency the president of the republic of Uganda.
5. That the applicant was shocked when their bank accounts in Orient Bank (U) Ltd where the said compensation was banked were frozen on orders from the respondent

after issuing a third party agency notice to collect taxes from the applicant without notice.

6. That the applicant will suffer irreparable damage that cannot be atoned by way of damages if the application is not granted by this honourable court as all business and cash transactions and already signed contracts have been put to standstill thus hurting the good will of the applicant in the business world

In reply, Mr. Patrick Oburu a police officer at the rank of Detective inspector of police attached to URA in the internal audit unit and compliance department stated as follows;

1. That he was instructed by the Ag Commissioner General to investigate and verify the authenticity of the consent judgment purportedly entered into between HABA GROUP (U) LTD representing Sheila Investments (U) Ltd; First Merchant International Trading Co.; Victoria International Ltd; Yudaya International Ltd and the Attorney General vide civil suits No.83 of 2007;590 of 2007;646 of 2006 and 21 of 2006
2. That the basis for the investigation was because there was an application filed by HABA GROUP (U) LTD against the respondent herein by way of judicial review seeking orders to quash the appointment of a collection agent purportedly in utter contempt of a consent judgment between the applicant herein and the Attorney General.
3. That the suits bearing civil numbers similar to those reflected in the purported consent judgment were between other parties and not between HABA GROUP LTD and Attorney General
4. That a letter was written to the Registrar, High Court Civil Division requesting for verification of the authenticity of the purported consent judgment
5. That His Worship Muwata confirmed and endorsed on the said letter that the purported consent judgment did not originate from the civil registry
6. That the Deputy Registrar High Court Civil Division, His Worship Keitirima further confirmed in writing that the purported consent judgment did not originate from High Court Civil Division and the purported signature of the deputy registrar was not authentic.
7. That it was on the basis of the forgery of the consent judgment that an interim order staying the enforcement of an agency notice against the applicant's bank account in Orient bank by the respondents was withdrawn and the agency notice reinstated

8. In the supplementary affidavit in reply sworn by Irene Mbabazi, the Ag. Manager Kampala central, domestic taxes department; she states that the tax liabilities of the applicant were at all material times communicated by way of assessment but no payment of taxes was ever made and neither were any objections received.
9. She further deponed that there are no apparent errors in the tax findings and assessment that have been brought to the attention of court and that since the applicant has not come to court with clean hands the application should be dismissed by this honourable court.

Parties filed written submission and the substantive issues raised Mr. Nangumya, counsel for the applicant, were;

- i) Whether the respondents' decision leading to the issuance of third party notices against the applicant offended the rules of natural justice by not granting a fair hearing to the applicant
- ii) Whether the third party agency notices issued by the respondent on the applicant's behalf are justified in the circumstances
- iii) What remedies are available to the applicant

In reply however counsel for the respondents raised 4 preliminary points and which he addressed in his written submission. So before this court delves into the merits of the application, it will consider the preliminary points of law as raised by counsel for the respondent. The 1st one touched on the mis-joinder of the Commissioner Domestic taxes as a respondent. Mr Mugabi for the respondent cited **section 12 of the URA Act Cap 196** that an employee of the authority shall not, in his or her personal capacity, be liable in civil or criminal proceedings in respect of an act or omission done in good faith in the performance of his or her functions under this Act. He also relied on the authority of **Bushenyi Commercial Agencies & Obadiah Ntebekaine v Commissioner Domestic Taxes Misc cause No.154 of 2010** where this court pronounced itself on a similar issue and ruled that the commissioner Domestic taxes cannot be sued in his personal capacity. That either the commissioner General or URA should be sued. While O.1 r 10 (2) of the Civil Procedure Rules allows striking off a party that has wrongly been sued and substitution of a right party, Mr. Mugabi thus invited this court to strike out the Commissioner Domestic Taxes.

In reply, counsel for the applicant did not agree, he relied on the case of **Commissioner General URA v Meera Investments Ltd SCCA No.22 of 2007** where Kanyeihamba JSC held

inter alia that it is abundantly clear that the Commissioner General is a competent party to a suit under these Acts certainly, if he or she can sue to recover tax, he/she can be sued by a party unhappy with the tax assessments made by the commissioner General or officers under him or her.

There is no dispute that the Commissioner General Uganda Revenue Authority is a competent party to a suit. This is well settled in the case of Meera cited above. The point that is raised in the objection is as to whether or not from the reliefs being sought in this application it was necessary to join the Commissioner Domestic Taxes Department URA. The answer is that it was not. The impugned decision can be investigated and quashed if the application meets the criteria for judicial review as will be discussed in this ruling and the consequence of quashing the decision would include the orders of an injunction, declaration, prohibition as stated in this ruling. The exclusion of the commissioner Domestic Taxes would not prejudice the application in any way.

Another preliminary point of law raised by the respondent was that the application together with its supporting affidavits sworn by Obed Mwebesa is riddled with falsehoods and forgeries and renders the application together with its affidavit fatally defective and unreliable and is further an abuse of court process. Mr. Mugabi cited section 98 of the Civil Procedure Act on the inherent power of the court so as to avoid abuse of process.

The affidavit deposed by the applicant is riddled with falsehood as there was never any consent judgment entered and what is on record is a forgery as the registrar, High Court Civil Division, confirmed that the alleged consent judgment relied on by the applicant did not originate from the said registry. A false affidavit cannot be relied upon, it thus renders the application defective; **MAKERERE UNIVERSITY V ST. MARK EDUCATION INSTITUTE LTD & ORS HCCS NO.378/1993, BITAITANA V KANAMURA (1977) HCB as quoted in MARK OKELLO V DAVID WASAJJA CIVIL REFERENCE NO.54 OF 2005**

The point raised here is fundamental because the basis of the application is an alleged consent judgment entered into between the Applicant and the Attorney General on the 6th day of October 2010 and allegedly filed by the Registrar of this Court on the same day. According to the Consent Judgment the Attorney General in accordance with the directives of His Excellency the President of Uganda agreed to pay compensation to the applicant and among other things agreed that “the above sums shall not be subjected to any taxes levied or reduced by the Defendant or its agents in any way”. During the pendency of this application the

authenticity of the above consent judgment which was annexed to the application was investigated according to the affidavit of Mr. Oburu already referred to in this ruling. As far as the Court is concerned the authenticity of consent judgment is so material to the outcome of the application that even before the conclusion of the investigation by the Police, Court had to peruse the record from which the consent judgment is alleged to have arisen before determining that the decision by the Commissioner General to issue the Third Party Notice was in contravention of the consent judgment or was ultra vires her power. Court was unable to peruse this record because it simply does not exist in the Registry.

In his reply to the respondents' written submissions raising the question of the authenticity of the judgment, counsel for the applicant stated as follows:-

“Your Lordship, further to our submissions, closure of the Applicant’s Bank Accounts alone is irreparable damage which this honourable Court had observed in granting the interim Order. This honourable Court’s unfortunate reinstatement of the said Third Party Agency Notice was to allow the Respondents to bring evidence to negate the Consent Judgment which they have failed to do adequately adduce even on a balance of probabilities and as such the Third Party Agency Notice should be quashed”. (Underlining supplied)

I wish to observe that instead of counsel blaming the court for reinstating the Third Party Notice which he describes as ‘unfortunate’ the applicant should have seized the opportunity to provide evidence of the existence of the court proceedings from which the consent judgment arose. Apart from copies of the documents filed on court files the applicant must have retained his own copies which would show as to when the suits were filed and when the consent judgment was entered. He would have provided this information by way of an affidavit in rejoinder to the one filed by Mr. Oburu. I do not comprehend as to how the court was to maintain the grant of the interim order when it could not establish the availability of the consent judgment from its own records and all indications were that it did not exist. I would agree with counsel for the respondent that an application based on an alleged ‘forged’ judgment is an abuse of court process and is not tenable in court. On that preliminary

objection I would dismiss the application without going into the merits of the application itself and I do not see any reason for delving into them.

Eldad Mwangusya

J U D G E

09.07.2012

09.07.2012

Geoffrey Nangumya for applicants

Respondents absent.

Clerk – Milton

Court:

Ruling read in open Chambers

Keitirima John Eudes

DEPUTY REGISTRAR

09.07.2012