

THE REPUBLIC OF UGANDA
IN THE SUPREME COURT OF UGANDA

AT MENGGO

**(CORAM: ODOKI, C.J, TSEKOOKO, MULENGA, KANYEIHAMBA,
KATUREEBE, J.J.S.C)**

CIVIL APPEAL NO. 12 OF 2006

BETWEEN

APOLO HOTEL CORPORATION LTD ::::::::::::::: APPELLANT

AND

1. **GEOFFREY ORYEMA }**
2. **STEVEN BALISANYUKA}**
3. **DANIEL MULUUTA } ::::::::::::::: RESPONDENTS.**
4. **JACK WASSWA }**
5. **ROBERT MUGISHA }**

[Appeal from the decision of the Court of Appeal at Kampala (G.M. Okello, A. Twinomujuni, and 1 umba, JJA) dated 30th August, 2006 in Civil Appeal No. 31 of 2004).]

JUDGMENT OF KATUREEBE, JSC

This is an appeal from a decision of the Court of Appeal in which that court reversed an order of the High Court striking out the appellant as defendant to a suit and held that the appellant was the right party to be sued by the respondents.

The background to the suit is as follows:

The respondents had been employed in various capacities at Kampala Sheraton Hotel between 1990 and 1997. In 1997, the respondents were dismissed from service on grounds they considered unlawful. In 2002, they filed a Civil Suit in the High Court, No. 165 of 2002 against the Appellant claiming for payment of terminal benefits, general damages for wrongful dismissal with interest on the decretal sums as well as costs of the suit.

Before the hearing of the suit, the appellant filed a Notice of Motion in which the appellant raised a preliminary point of law namely, that the appellant was a wrong party to the suit because the respondents have never been its employees. During the hearing of the motion it was argued that the appellant had neither recruited, employed nor dismissed the respondents. The appellant contended that it did not own Apolo Hotel as owner or successors to Apolo Hotel Corporation. The learned trial judge accepted this submission and held that the appellant only owned the land on which the hotel stood while the Government of Uganda owned the business. She dismissed the suit. Dissatisfied with the decision, the respondents appealed to the Court of Appeal, on five grounds of appeal. The first ground was abandoned while grounds second and fourth were argued together. The gist of those grounds was that the learned trial judge had misdirected herself in law and fact in holding that Apollo Hotel Corporation, the appellant's predecessor, did

not own or operate the Sheraton Hotel, but that it was owned by the Government of Uganda and operated by Sheraton Overseas Management Corporation as agent of the Government.

The ownership of the Hotel, variously known as Apolo Hotel, Kampala International Hotel, Sheraton Hotel, Kampala, etc became the core issue for decision on appeal. As Twinomujuni, JA, put it in his lead judgment at page 4:

“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 Ltd as claimed by the appellants.”

The Court of Appeal unanimously decided this issue in favour of the respondents. Twinomujuni, JA, stated this at page 8 of his judgment:

“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 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.....

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.”

In effect this disposed of the appeal in favour of the respondents, hence this appeal by the appellant.

The appellant filed two grounds of appeal worded as follows:-

1. ***“That the learned Justices of Appeal erred in law and in fact in holding that the trial judge was in error when she held that the Hotel belonged to Uganda Government and not to the respondent.***
2. ***That learned Justices of Appeal erred in law and in fact in holding that the respondent was the employer of the appellants.”***

Dr. Byamugisha, counsel for the appellant, argued both grounds together. He argued very strongly that the trial judge was correct in her findings that the Hotel was owned by the Government of Uganda, and, therefore, the respondents were employees of the Government and not of the appellant. This finding, learned counsel argued, was based on the letters of appointment of the respondents which were signed by Sheraton Kampala Hotel and not by the appellant. Counsel contended further that the Kampala Sheraton Hotel was operated by the Sheraton Overseas Management Corporation as agent of the Uganda Government pursuant

to the Management agreement between those two parties, i.e., the Government and Sheraton Overseas Management Corporation. He supported the trial judge's finding that ***“the respondents were recruited by the General Manager and Director of Personnel and Training of Kampala Sheraton Hotel on behalf of and for the Ministry of Tourism and Wildlife; and not Apollo Hotel Corporation.”***

Counsel submitted therefore that given the evidence of these appointment letters and the Management Agreement, there was no basis upon which the Court of Appeal could have arrived at its finding that the Appellant was a successor company to Apollo Hotel Corporation so as to take over the liabilities of that corporation. He concluded that the Court of Appeal had misdirected itself both in law and in fact.

Mr. Siraj Ali, counsel for the respondents, fully supported the findings and conclusions of the Court of Appeal. He argued that ownership of property is a question of law. In determining ownership, regard must be had to the instrument conferring ownership. In this case one had to consider the Apollo Hotel Corporation Act, No. 6 of 1967 which established the corporation as a statutory body with mandate to own and manage a Five – Star Hotel. Counsel further submitted that even when the name of the Hotel was changed to Kampala International Hotel by Decree No. 34 of 1971, ownership of that Hotel still remained with Apollo Hotel Corporation.

It was his view that the Government of Uganda committed an illegality by signing the Management Agreement with Sheraton Overseas Management Corporation. This agreement to him, should have been signed by a Board of Directors on behalf of the Corporation and not by a Minister on behalf of the Uganda Government. Counsel argued further that the appellant company was formed under the Public Enterprises Reform and Divestiture Act, 1993, and took over the assets and liabilities of the Sheraton Hotel Kampala. He cited object 3(a) of the Objects of the Appellant Company's Memorandum of Association. He contended, that since the respondents had been dismissed by Sheraton Hotel Kampala on 15th May 1997, they had been prior to their dismissal, employees of Apolo Hotel Corporation by virtue of the Apolo Hotel Corporation Act. He supported the holding of the Court of Appeal that Apolo Hotel was legally owned by the appellant as legal successors to Apolo Hotel Corporation, and that the Government of Uganda had been a mere shareholder in the company. He contended further that the respondents had been recruited by Sheraton Overseas Management Corporation as agent of the owner of the Hotel, the language of the appointment letters notwithstanding. He asserted that Apolo Hotel Corporation owned the Hotel by operation of law and therefore people who worked for the Hotel were employees of the corporation. He asserted further that the learned trial judge had no basis in law or in fact

to hold that the Apolo Hotel Corporation owned the land upon which the hotel was situated, but that the business of the Hotel was owned by the Government.

Having carefully gone through the submissions of both learned counsel, the judgment of the Court of Appeal and the ruling of the High Court, I note that there appears to be serious gaps in the evidence before both Courts. It is not clear upon what evidence the trial judge held that the business of the Hotel belonged to the Government while the land belonged to Apolo Hotel Corporation.

According to section 3 of the Apollo Hotel Corporation Act, the Apolo Hotel was clearly owned by the corporation. The relevant part reads as follows:-

3(1) "The Corporation shall own and administer, control and manage the Apolo Hotel as a first-class international Hotel and without prejudice to the generality of the foregoing, it shall be the duty of the corporation,

- (a) ***to provide accommodation, entertainment and any other facilities usually provided by hotels of comparable status to all comers at such prices as may be prescribed without any special or previous contract, unless there are reasonable grounds to refuse the said facilities to such persons;***
- (b) ***to encourage and attract travel to Uganda."***

Given the above clear provisions of the law, one would need evidence to show at what point in time, if at all, the business vested in the corporation by law, shifted to the Government. No evidence appears to have been adduced, nor was there any amendment to the above provisions of the law cited.

Likewise, section 29 of the Act states as follows with respect to the land of the Hotel:-

29 (1) “ Notwithstanding the provisions of section 19 of the Public Lands act, the Land Commission shall transfer to the Corporation all its estate and interest in the land required for the purposes of the Hotel which is more particularly described in the schedule to this Act.” (emphasis added).

I do not see any evidence on record that the law was amended so as to leave the corporation only vested with the land but not the business.

Counsel for the respondents asserted that the government committed an illegality in signing a Management Agreement for the Hotel without going through the Board of Directors. Counsel could not say how this had come about as, indeed, he could not answer the question whether the Hotel was functional at the time Government signed the Management Agreement with Sheraton Overseas Management Corporation.

In his lead judgment, Twinomujuni, JA, states at page 10 of the judgment as follows:

“I think the Government of Uganda was not well advised to assume ownership of Sheraton Hotel when its owner was Apolo Hotel Corporation and its successor, the Apolo Hotel Corporation Limited. The capacity in which it entered a management contract with Sheraton Overseas Management Corporation is highly questionable.

I would hold that the learned trial judge erred to hold 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 HCC 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.”

The above finding and holding clearly show that the Court was not availed relevant sufficient evidence on which to make a definitive holding. If the capacity in which the government entered the Management Contract is questionable, then the question must be answered with evidence showing how the Government had come into the picture. For example what would be the duty and role of a 100% shareholder of a company or a corporation if the business of the

company or corporation were to collapse and needed further re-capitalization and restart? Would shareholders be acting illegally if they did not only re-capitalise the business but also put different management in place? Would such expenses be considered, the same way as pre-incorporation expenses are considered, under section 14 of the Apolo Hotel Corporation Act? What would be the effect of section 30 of the Apolo Hotel Corporation Act, whereby the Minister may, by statutory Instrument apply to the corporation provisions of the Companies Act, if indeed any such course of action was taken, were this to have been applied?

In my view, evidence should have been led to show the developments leading to the so as “*illegal*” or “*highly questionable*” intervention of the Government.

The learned Justice of Appeal refers to “*confusion introduced in the ownership question,*” and suggests that appellants (present respondents) may name the government as co-defendant. That would still have to be resolved by evidence and legal argument in the High Court, since the Government may as well also argue that it was not the proper party to be sued.

Nevertheless, the learned Justice of Appeal concludes that the defendant was the proper defendant in the suit.

I agree with this conclusion based on the analysis of the law, i.e. the Apolo Hotel Corporation Act and the Public Enterprises Reform and Divestiture Act. I agree with the learned Justice of Appeal that although the Government was the majority shareholder in Apolo Hotel Corporation, at all times the hotel belonged to the Corporation and not to its shareholder. Indeed, when it came to divestiture under the Public Enterprises Reform & Divestiture Act, what the Government divested itself of were its shares in the Corporation, which were then transferred to the Appellant. Indeed it has to be noted, and as argued by Counsel for the Respondents,` that the Appellant has in its Memorandum of Association the following objects:

“3a) 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 the rights, assets, property, obligation and liabilities of the Apollo Hotel Corporation, which is established under the Apolo Hotel Corporation Act 1967 (emphasis added).

(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 Statute 1993 all rights, assets, property, obligations and liabilities of Apolo Hotel Corporation.

- (c) To own and manage the Apolo Hotel as a five star hotel.”**

Clearly, even the above objects distinguish between the proprietary interest of the Government of Uganda on the one hand, and the liabilities, obligations, rights, assets and property of Apolo Hotel Corporation. I, therefore, agree with the Court of Appeal that the Appellant as successor to the Apolo Hotel Corporation is the right defendant.

In the result I would dismiss the appeal and order that the case be remitted to the High Court for proper trial. I would order that the costs of this appeal abide the trial in the High Court and those in the Court of Appeal be borne by the appellant as ordered by that Court.

Dated at Mengo this 21st day of September 2007

Bart M. Katureebe

Justice of The Supreme Court

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IN THE SUPREME COURT OF UGANDA
AT MENGO**

**(CORAM: ODOKI; TSEKOOKO, MULENGA, KANYEIHAMBA,
KATUREEBE, JJ.S.C.)**

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- 2. **STEPHEN BALISANYUKA**
- 3. **JACK WASSWA** :::::::::::::::::::::::::::::: **RESPONDENTS**
- 4. **DANIEL MULUUTA**
- 5. **ROBERT MUGISHA**

{Appeal from the decision of the Court of Appeal at Kampala (Okello, Twinomujuni and Kitumba, JJA} dated 30th August 2006 in Civil Appeal No. 31 of 2004}

JUDGMENT OF ODOKI, CJ

I have had the benefit of reading in draft the judgment prepared by my learned brother, Katureebe, JSC, and I agree with him that this appeal should be dismissed. I also agree with the orders he has proposed.

As other members of the Court also agree, this appeal is dismissed with orders as proposed by Katureebe JSC.

Dated at Mengo this 21st Day of September 2007

**B J Odoki
CHIEF JUSTICE**

this appeal should be dismissed and that the case be remitted to the High Court for trial.

Reading through the record particularly the ruling of the High Court and the judgment of the Court of Appeal, I have no doubt in my mind that the learned trial judge erred when she struck out the appellant as defendant, without conducting a full trial. I think this is a case where the trial Court should hold a scheduling conference, sort out points of agreement and disagreement between the parties, frame issues thereafter and conduct a full hearing, unless the parties agree to settle the suit.

I therefore agree with my learned brother that this matter should be remitted to the High Court for trial. I would therefore dismiss the appeal. I would order that the costs of this appeal abide the trial in the High Court and those in the Court of Appeal be born by the appellant as ordered by that Court.

Delivered at Mengo this 21st day of September 2007.

J. W. N. TSEKOOKO

JUSTICE OF THE SUPREME COURT

**THE REPUBLIC OF UGANDA
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KATUREEBE, JJ.S.C.**

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*(Appeal from the decision of the Court of Appeal (Okello, Twinomujuni and Kitumba
JJ.A.) at Kampala, dated 30th August 2006 in Civil Appeal No. 31 of 2004)*

JUDGMENT OF MULENGA, JSC

I had the advantage of reading in draft the judgment prepared by my learned brother Katureebe, JSC. I agree with him that this appeal is without merit and that it ought to be dismissed. I also concur in the orders he proposes as to costs.

Dated at Mengo this 21st day of September 2007

J. N. Mulenga
Justice of Supreme Court

THE REPUBLIC OF UGANDA
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**(CORAM: ODOKI, C.J, TSEKOOKO, MULENGA, KANYEIHAMBA,
AND KATUREEBE, JJ.S.C.)**

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[Appeal from the decision of the Court of Appeal at Kampala before (Okello, Twinomujuni, Kitumba, JJA) dated 30th August 2006 in Civil Appeal no. 31 of 2004].

JUDGMENT OF KANYEIHAMBA, JSC

I have had the benefit of reading in draft the judgment of my learned brother, Katureebe, J.S.C and I agree with his reasons and decision that this appeal be dismissed and the case be remitted to the High Court for trial. I also agree with the orders he has proposed.

Dated at Mengo, this 21st day of September 2006

G.W. Kanyeihamba
JUSTICE OF SUPREME COURT