THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA AT KAMPALA

[CORAM: MWONDHA; TIBATEMWA-EKIRIKUBINZA; TUHAISE; CHIBITA; MUSOKE JJ.S.C.]

CIVIL APPEAL NO. 18 OF 2020

BETWEEN

1. DISON OKUMU
2. JOSEPH HENRY NDAWULA
3. EDWARD RUBANGA
4. STEPHEN MUKASA
5. MUBIRU FREDRICK
6. STEPHEN EPILU
7. MARY WACHA
8. OYELLA ROSE EVE

APPELLANTS

AND

1. UGANDA ELECTRICITY TRANSMISSION CO. LTD
2. UGANDA ELECTRICITY DISTRIBUTION CO. LTD
3. UGANDA ELECTRICITY BOARD (IN LIQUIDATION)
4. ALEX BASHASHA T/A BASHASHA & CO. ADVOCATES
5. PAUL NYAMARERE
6. HENRY KYAMBADDE
7. JOHN WALUGO

RESPONDENTS

[Appeal from the Judgment and orders of the Court of Appeal at Kampala before Hon. Justices: (Kakuru; Kiryabwire & Madrama, JJ. A) dated 20th July 2020 in Civil Appeal No. 28 of 2017.]

Representation: *At the hearing, the appellants were represented by Counsel Ebert Byenkya.*

The 1st and 3rd respondents were represented by Counsel Paul Ahimbisibwe.

The 2nd respondent was represented by Counsel Ebila Hillary Nathan (State Attorney) holding brief for counsel Simon Anywar-the legal counsel of the 2nd respondent company.

The 4th respondent was represented by Counsel Lawrence Tumwesigye.

The 5th, 6th and 7th respondents were represented by Counsel Mpumwire Abraham and Tumusiime Ronald.

The parties adopted their written submissions filed in Court. Counsel for the 2nd respondent associated himself with his co-respondents' submissions.

There was no official from the 1st and 2nd Respondent Companies in Court.

Summary:

Res judicata - whether the matter before Court is res judicata- what factors guide court in determining if a matter is res judicata.

Consent judgment and orders- whether a consent judgment and orders can be appealed against.

Representative suits-Joinder of parties in a representative suit-whether non-joinder of a party to a representative suit renders the entire suit a nullity.

Representative suits-whether a party represented in a representative suit has locus to file a fresh case in their individual capacity to challenge the orders given by court in the representative suit.

Locus standi- An individual litigant who consents to a representative action has no *locus standi* to challenge the judgment and orders of Court arising from the representative suit.

Locus standi- Any judgment or Order arising from a representative action is binding on all persons represented.

JUDGMENT OF HON. JUSTICE PROF.TIBATEMWA-EKIRIKUBINZA, JSC.

Introduction

This is a second appeal against the decision of the Court of Appeal which upheld the decision of the High Court in **H.C.C.S No. 49/2014** striking out the suit because it was incompetent.

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Background:

The brief background to this appeal as gathered from the record is as follows: The appellants and the 5th, 6th, and 7th respondents were employees of the defunct Uganda Electricity Board (UEB) and its successor companies namely Uganda Electricity Distribution Company Limited and Uganda Electricity Transmission Company Limited, the 1st and 2nd Respondents herein.

The appellants together with other 1500 persons had their employment with UEB and its successor companies terminated. They sought payment of their terminal benefits without success.

The appellants and the other former employees of UEB and its successor companies being aggrieved with the nonpayment of their terminal benefits sought Court for a redress. The 5th, 6th and 7th Respondents and a one Josephine Nakafeero were granted leave by Court to file representative suits on behalf of the former employees of UEB and its successor companies including the appellants to recover their terminal benefits. The representatives instructed the 4th respondent firm to file and prosecute these representative suits. The suits were:

(a) Josephine Nakafeero & others vs. UETCL & others (H.C.C.S No. 760 of 2006);

(b) Walugo John & Ors vs. UETCL & others (H.C.C.S. No. 967 of 2005);

(c) Paul Nyamarere, Kyambadde Henry & others vs. UETCL & others (H.C.C.S. No. 138 of 2008).

After a protracted trial process of the above suits and various incidental proceedings including among others verification of the employees and what was due to them by the Auditor General, the representatives filed High Court Misc. Application No. 234 of 2012; Kyambadde Henry & others vs. UETCL & others which was heard and determined by Mwangusya, J. (as he then was).

On 13th July 2012, all the suits including the above application were consolidated and judgment on admission entered in favour of the representatives for a sum of Ug shs. 47,972,421,017/= in partial

fulfillment of the claims in the said suits. Court also ordered that all payments were to be paid through the official receiver/liquidator UEB in liquidation after deducting the lawyer's fees.

Subsequently, on 31st May 2013, the parties entered into a post judgment compromise to wholly resolve the issues that remained unresolved under the judgment on admission. The compromise was adopted by Court, endorsed and a decree of the same extracted.

The 4th Respondent subsequently filed Misc. Application No. 272 of 2013 to have his Advocate/Client Bill of Costs taxed. A consent order by the parties to the said application was accepted and endorsed by the taxing master on 09/06/2013.

Thereafter, the decree of Court in HCCS No 138 of 2008 (as consolidated) was substantially satisfied and/or executed with the former employees receiving payments of their terminal benefits.

On the 24th February 2014, the appellants filed a suit in the High Court by way of a plaint vide **High Court Civil Suit No. 49 of 2014** against the Respondents seeking to set aside: (a) part of the Judgment on Admission in High Court in Misc. Application No. 234 of 2012 which authorized the deduction of lawyer's fees from pension; (b) a post judgment compromise that was accepted and endorsed by the High Court Judge arising from HCCS No. 138 of 2008 (as consolidated); and (c) a consent taxation order endorsed by a Registrar as a taxing officer arising from Misc. Application No. 272 of 2013.

At the commencement of the hearing, counsel for the respondents raised preliminary objections regarding the competence of High Court Civil Suit No. 49 of 2014 to the effect that:

i. The suit was brought under the wrong procedure, the respondents should have applied for review of the High Court decisions or appealed, instead of a suit by way of a plaint;
ii. The applicants had no *locus standi* to institute the suit since they were part of the group who had previously authorized the 5th, 6th and 7th respondents to file representative actions against the Attorney General, the first and second respondents and others;

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iii. The suit was *res judicata* since it raised the same issues that had been determined by the High Court between the same parties; and

iv. The suit sought to deny 1,500 pensioners their entitlements without being given a right to be heard since they are not parties thereto.

The appellants' counsel opposed the preliminary objections but the learned trial judge upheld the same and dismissed High Court Civil Suit No. 49 of 2014 with costs to the respondents.

Aggrieved with the decision of the learned trial Judge, the Appellants appealed to the Court of Appeal vide **Civil Appeal No. 28 of 2017**. Their appeal was dismissed with costs to the respondents. The appellants were still dissatisfied by the decision of the Court of Appeal and filed the instant appeal on the following seven grounds of Appeal:

1) **The learned Justices of the Court of Appeal erred in law when they upheld the dismissal of H.C.C.S. No. 49 of 2014 by the High Court for reason of non-joinder of parties.**

2) **The learned Justices of the Court of Appeal erred in fact and law when they upheld the trial Court's finding that H.C.C.S. No. 49 of 2014 was barred by reason of *res judicata*.**

3) **The learned Justices of the Court of Appeal erred in fact and law in upholding the decision of the High Court that the Appellants had no locus standi to file a suit to set aside Consent Orders in H.C.M.C. No. 272 of 2013 purportedly entered on their behalf between the 4th Respondent and 5th to 8th Respondents with regard to Clients-Advocates costs.**

4) **The learned Justices of the Court of Appeal erred in law when they upheld the decision of the trial Court that the Appellants had no locus to file a suit to set aside a Compromise dated 31/05/2013 in respect to H.C.C.S. No. 967 of 2005, 760 of 2006 and 138 of 2008, between the 1st to 3rd Respondents and 5th to 8th Respondents.**

5) **The learned Justices of Appeal erred in law when they held that the Appellants had no locus standi to set aside part of**

the judgment on Admission in H.C.M.A. No. 234 of 2012, which purported to authorize deduction of 'advocates fees' from the Appellants' pension.

6) The learned Justices of Appeal erred in law when they upheld the trial court's finding that H.C.C.S. No. 49 of 2014, filed in the High Court to set aside the Consent Orders was filed in the wrong forum.

7) The learned Justices of Appeal erred in fact and in law when they upheld the finding of the trial Court that H.C.C.S. No. 49 of 2014 was filed using a wrong procedure.

Prayers:

1.The Appellants prayed that the appeal be allowed and the decision of the Court of Appeal be reversed with orders that H.C.C.S. No. 49 of 2014 be reinstated and tried inter-parties before another Judge.

2.The appellants also prayed for costs of the appeal.

Submissions of counsel

Ground 1

Appellants' Submissions

Counsel for the appellants faulted the learned Justices of the Court of Appeal for upholding the decision of the High Court which was to the effect that omitting to add the Attorney General and/or about 1500 other persons represented by the 5th to 7th Respondents in the consolidated representative suits to H.C.C.S. No. 49 of 2014 rendered the said suit a nullity.

In support of the above submission, counsel relied on **Order 1 Rule 9 of the Civil Procedure Rules** which provides that no suit shall be defeated by reason of misjoinder or non-joinder of parties and **Rule 10(2)** which allows the Court to add a defendant on its own motion or upon application by either party and submitted that had the learned Justices of the Court of Appeal addressed their minds to the said provisions, they would have held otherwise. Counsel further

submitted that both the High Court and the Court of Appeal were addressed on these provisions but did not rely on them.

Counsel also relied on the decision of this Court in **Mohan Musisi Kiwanuka vs. Asa Chand**[1] and submitted that if both the trial Court and the learned Justices of the Court of Appeal deemed it necessary to have the Attorney General and the 1500 persons as parties to the suit, they ought to have added them.

Respondents' reply

Counsel argued that the issue before the Court of Appeal was not about non joinder but rather the fact that the appellants were seeking to set aside orders of Court without the involvement of the Attorney General and the 1500 persons who were parties to the said orders. The respondents argued that the Court of Appeal rightly observed that this would amount to condemning the Attorney General and the 1500 persons without being heard.

The respondents' counsel further submitted that the right to be heard was non derogable and that the appellants could not therefore be allowed to violate this right with respect to the Attorney General and the 1500 persons who were parties to the orders that are sought to be set aside in H.C.C.S. No. 49 of 2014. Counsel relied on the authority of **Bakaluba Peter Mukasa vs. Nambooze Betty Bakireke**[2] to support this argument.

Counsel further contended that the Attorney General undertook to pay the decretal sum and actually paid the same to the 1500 claimants. As such, the orders sought could not be challenged in the absence of the other parties. Counsel submitted that failure to join them as parties to the suit rendered the suit incompetent.

Without prejudice to their submissions above, Counsel argued that the provisions of Articles 28 and 44 of the Constitution reigned supreme compared to the provisions of Order 1 Rules 9 and 10 of the Civil Procedure Rules.

Counsel submitted that the appellants did not formally apply to court under the Rules to allow them join the absent parties. Counsel

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[1] SCCA No. 14 of 2007.
[2] SCEPA No. 04 of 2009.

submitted that if a necessary party is not impleaded, the suit was liable to be dismissed. Counsel relied on the persuasive Indian case of **Sujata Gandhi vs. SB Gandhi**[3] to support this submission.

Counsel submitted that the rules are discretionary and therefore the trial Judge did not misdirect himself when he declined to exercise his discretion to add the parties since such an order would be premature, misconceived and unjust. Counsel relied on the case of **Allah Ditta Qureshi vs. Patel**[4] to support this submission.

Counsel further submitted that Order 1 rule 6, rule 10(2) and rule 13 of the Civil Procedure Rules when read together lead to a conclusion that a court cannot compel a plaintiff to sue a party he/she does not wish to sue.

Lastly, counsel submitted that the case of **Mohan Musisi Kiwanuka vs. Asa Chand**[5] cited by counsel for the appellants was distinguishable from the facts in this appeal.

Ground 2

Appellants' Submissions

Counsel submitted that the learned Justices of Appeal erred in relying on an undertaking by the parties in HCMA No. 290 of 2007 to refrain from further proceedings as a basis for making a positive finding on *res judicata*. Counsel submitted that such an undertaking cannot constitute a basis for a finding of *res judicata* and that such has never been one of the elements of *res judicata*. The learned Justices of the Court of Appeal therefore misdirected themselves and thus reached a wrong decision.

Counsel also submitted that the learned Justices of Appeal were under the misconception that High Court Civil Suit No. 49 of 2014 was a fresh claim for terminal benefits against the respondents and presumably, thought that the same matters had already been litigated and decided by the High Court. Counsel relied on paragraphs 5 and 6 of the plaint, and submitted that had the learned Justices of the Court of Appeal addressed themselves properly to the said

[3] Appeal No.1079 of 2019.
[4] [1951] 18 EACA.
[5] SCCA No. 14 of 2007.

paragraphs, they would have found that HCCS No. 49 of 2014 was different from the previously instituted suits which were claims for terminal benefits against the respondents to each and all of the consolidated suits.

Counsel submitted that the matters substantially in issue in HCCS No. 49 of 2014 were not the same as those for which Justice Mwangusya entered a judgment on admission in the consolidated suits. It was also counsel's submission that the parties to the previous proceedings were not the same in all respects specifically referring to the 4th respondent who was not a party to the previous suits.

Lastly, counsel faulted the learned Justices of the Court of Appeal for failing to appreciate the wealth of authorities that have established the principle that courts will entertain a fresh suit to set aside a consent judgment on any grounds that would be capable of setting aside a contract. In support of this submission, counsel relied on the cases of **Ismail Surander Hirani vs. Noorali Esmail Karim**[6] and **Attorney General vs. James Mark Kamoga and another.**[7]

Respondents' reply

Counsel disputed the appellants' contention that the learned Justices of the Court of Appeal made a positive finding on *res judicata* based on an undertaking by the parties to HCMA No. 290 of 2007. Counsel submitted that the observations by the learned Justices on the issue of the undertaking were long after the learned Justices had confirmed the findings of the learned trial Judge that the issues arising in HCCS No. 49 of 2014 offended the doctrine of *res judicata.*

Counsel further refuted the appellants' submissions that the learned Justices were under a misconception that HCCS No. 49 of 2014 was a fresh claim for terminal benefits against the respondents. Counsel submitted that the claim as indicated in the plaint concerned and revolved around the payment of the appellants' terminal benefits after deducting the lawyer's fees which issue was conclusively determined in M.A. No 234 of 2012.

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[6] Civil Appeal No. 11 of 1952.
[7] Civil Appeal No. 8 of 2004(SC).

Counsel further submitted that the issue of payment of the legal fees was also adjudicated upon in various cases such as in Misc. Cause No.272 of 2013, HCMA No. 296 of 2013; Baligobya Jamada VS. M/S Bashasha & Co. Advocates, and HCMA No. 289 of 2013; Edward Rubanga (the 2nd Appellant) VS. M/S Bashasha & Co. Advocates. Counsel therefore submitted that the suit was res judicata.

Counsel also refuted the appellants' arguments that the matters raised in HCCS No. 49 of 2014 were not *res judicata* since the said suit had a new party the 4th respondent herein. Counsel submitted that the 4th respondent was a party in various applications wherein the issue of legal fees was considered.

Lastly, counsel relied on Section 7 of the Civil Procedure Act and the case of **Father Narsensio Begumisa and 3 others vs. Eric Tibebaga**[8] and submitted that the learned Justices of the Court of Appeal were right to uphold the finding of the learned trial Judge that HCCS No. 49 of 2014 offended the doctrine of *res judicata*.

Grounds 3, 4 and 5

These three grounds were argued together. They deal with the issue of *locus standi* by the appellants to file HCCS No. 49 of 2014.

Appellants' submissions

Counsel faulted the learned Justices of the Court of Appeal for holding that the appellants did not have *locus standi* to file HCCS No. 49 of 2014. Counsel submitted that had the learned Justices of the Court of Appeal addressed their minds to the facts and case law, they could have found that there is nothing that bars a represented person from challenging an action taken by the representative if it adversely affected their rights. Counsel relied on the case of **Shell (U) Ltd v Muwema Mugerwa & Co. Advocates & another SCCA No. 2 of 2013** and submitted that the appellants being dissatisfied with the actions of their representatives to enter agreements clothed as 'consent taxation order' and a 'consent compromise order' had every right to challenge the same in Court. Counsel submitted that in entering the said 'agreements' the 5th, 6th and 7th respondents exceeded their

[8] SCCA No. 17 of 2002

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authority as the appellants' representatives and as such, the representatives could challenge the said 'agreements' in Court.

Counsel relied on the case of **Ladak Abdullah Mohammed Hussein V Griffith Isingoma Kakiiza**[9] and submitted that any person with a direct interest in the subject matter who seeks to challenge a consent order had a right to do so.

Respondents' reply

Counsel supported the decision of the learned Justices of the Court of Appeal that the appellants did not have locus to file HCCS No. 49 of 2014. Counsel submitted that the orders of Court the appellants sought to set aside arose from HCCS No. 138 of 2008 as consolidated wherein the 5th to 7th respondents had filed a representative suit on their own behalf and on behalf of other former employees of UEB who included the appellants. Counsel submitted that they were therefore bound by the orders of Court.

Counsel also submitted that the learned Justices of the Court of Appeal properly addressed themselves to the legislative purpose of Order 1 rule 8 of the Civil Procedure Rules and properly applied a proper interpretation to facilitate its purpose of enabling several parties to come to justice under one action rather than under separate claims. Counsel further contended that the learned Justices of the Court of Appeal were correct to agree with the learned trial Judge that HCCS No. 49 of 2014 was intended to prolong the litigation. Counsel found it strange that indeed out of the 1500 former workers only three had issues with the actions of their representatives.

Counsel argued that the case of **Shell (U) Ltd vs. Muwema Mugerwa & Co. Advocates & another**[10] was distinguishable from the facts of the present appeal. He argued that it goes against the import of representative orders under Order 1 rule 8 of the Civil Procedure Rules. Counsel further argued that the Shell case dealt with a remuneration agreement, yet in the present case the appellants' dissatisfaction was in respect of Court Orders that directed the payment of their terminal benefits after deducting lawyers' fees.

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[9] SCCA No. 8 of 1995
[10] SCCA No. 2 of 2013

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Counsel also contended that the authority of **Ladak Abdullah Mohammed Hussein vs. Griffith Isingoma Kakiiza SCCA No. 8 of 1995** was not applicable in this case since, *inter alia*, the appellants were not third parties to the court orders that they seek to set aside.

Counsel submitted that the appellants could not approbate and reprobate at the same time contending that the said appellants having been beneficiaries of a judgment of court through their duly appointed representatives, could not at the same time be seen trying to avoid their duties under the same like paying legal fees arising from the judgment they benefitted from. Counsel invited this Court to find that the appellants were bound by the actions of their representatives.

Lastly, counsel submitted that the action of a representative is deemed to be in the best interest of the individuals represented as long as it is sanctioned by court. Counsel submitted that by entering into the compromise and consent, the representatives were still in their mandate and were acting in the best interest of the appellants and the 1500 workers as a whole. The appellants therefore had no locus to bring a fresh suit in respect of the same matters.

Grounds 6 and 7

These grounds were argued together. They are in respect of the procedure adopted by the appellants in seeking to set aside a judgment on admission, a post judgment compromise and a consent taxation order.

Appellants' Submissions

Counsel submitted that the upshot of the findings of the learned Justices of the Court of Appeal was that a challenge to the consent taxation order or compromise could only be by way of appeal to the Court of Appeal and that the law does not envisage any post judgment remedies in the same court.

Counsel also submitted that whereas the learned Justices of the Court of Appeal implicitly acknowledged the right of the appellants to seek to set aside the judgment through a suit they held otherwise on the basis that filing a plaint was not suitable in the circumstances. Counsel relied on the case of **Ladak Abdullah Mohammed Hussein vs. Griffith Isingoma Kakiiza SCCA No. 8 of 1995** and submitted

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that a person directly affected by a judgment can seek to set it aside by filing a suit. Counsel argued that since the appellants were affected by the consent judgment entered into by their representatives, they could file a suit to set aside such a consent judgment. Counsel also relied on the case of **All Sisters Company Ltd vs. Guangzhou Tiger Head Battery Group Company Ltd HCMA No. 307 of 2011** to buttress this argument.

Counsel submitted that it was wrong to reject the plaint in HCCS No. 49 of 2014 on the basis of improper procedure. Counsel further contended that a consent order is not appealable to the Court of Appeal and that the only remedy was to seek to set it aside by filing a suit in the High Court. According to counsel, the correct forum was indeed the High Court.

Counsel therefore invited this Court to allow the appeal.

Respondents' reply

Counsel supported the finding of the learned Justices and contended that the appellants had used a wrong forum in filing HCCS No. 49 of 2014 to set aside a judgment on admission in HCMA No. 234 of 2012, a post judgment compromise, and a Consent Order in HCMA No. 272 of 2013. Counsel submitted that the Court of Appeal was right to agree with the trial judge that the procedure of filing a fresh suit to challenge these orders is alien in our jurisprudence and that an aggrieved party ought to have either filed an appeal in accordance with section 66 of the Civil Procedure Act or review in accordance with section 83 of the Civil Procedure Act in the same Court but not a fresh suit. Counsel further submitted that an appeal to the Court of Appeal is commenced by a Notice of Appeal and review under Rule 46 of the Civil Procedure Rules was by an application and not a fresh suit.

Counsel further invited this Court to be persuaded by the views of the learned trial judge on this issue at page 135 of the Record and added that the cases cited by the appellants were distinguishable.

Counsel submitted that HCCS No. 49/14 was actually a disguised appeal which should have been filed in the Court of Appeal.

In conclusion, counsel invited this Court to dismiss this appeal.

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Rejoinder by the Appellants

Counsel for the appellants substantially reiterated his earlier submissions. Suffice to say some of counsel's submissions went into the merits of H.C.C.S. No. 49 of 2014 which would be premature at this stage.

Court's consideration of the Appeal

The mandate of this Court as a second appellate court is well settled. **The Executive Director, National Environmental Management Authority (NEMA) vs. Solid State Limited**[11] cited with approval the case of **Kifamunte vs. Uganda**[12] wherein this Court held that:

> **It does not seem to us, except in the clearest of cases, that we are required to re-evaluate the evidence like the first appellate court save in Constitutional cases. On a second appeal, it is sufficient to decide whether the first appellate Court, in approaching its task, applied or failed to apply such principles.** (My Emphasis)

I shall now proceed to determine the grounds of appeal with the above principles in mind. I must point out from the onset that the grounds of appeal arose from preliminary objections which if successful had the effect of disposing of the main suit.

Ground 1: Whether the Learned Justices of the Court of Appeal erred in law in striking out HCCS No 49 of 2014 for non-joinder of parties.

The complaint under this ground is that the learned Justices of the Court of Appeal erred in law by holding that the learned trial Judge was right to strike out High Court Civil Suit No. 49 of 2014 for failure to include the Attorney General and the 1500 persons as parties to the said suit.

A careful reading of the judgment of the Court of Appeal shows that their Lordships upheld the striking out of HCCS No. 49 of 2014 on grounds that its determination would result in condemning other

[11] SCCA No. 15 of 2015.
[12] [1999] 2 EA 127

parties unheard. The Court of Appeal in upholding the trial Judge's decision to strike out H.C.C.S. No. 49 of 2014 reasoned at page 12-13 in the lead Judgment of Hon. Justice Geoffrey Kiryabwire, JA as follows:

"The trial Judge found that the 5th to 8th respondents had been sued in their individual capacity and not as representatives of the 1500 former staff who were to benefit from the compromise. It was therefore clear that the Attorney General who had undertaken to pay the dues of the said 1500 former staff and the said staff themselves could be condemned unheard if the suit proceeded in that manner. The right to be heard is a fundamental basic right. It is one of the cornerstones of the whole concept of a fair and impartial trial. The principle of 'Hear the other side' or in Latin 'Audi Alteram Partem' is fundamental and far reaching. These are enshrined in Article 28 (1) and Article 44 (c) of the Constitution...I cannot fault the trial judge on this finding. To set aside or vary in anyway the compromise in HCCS No. 138 of 2008 would require all the parties therein to be heard. The compromise which led to the payment of outstanding pension was hard fought for, using representative actions and one cannot in my view subsequently ride on those gains and narrow them to individual actions."

I agree with the above finding. The appellants in HCCS No. 49 of 2014 sought to set aside a judgment on admission in HCMA No. 234 of 2012, a post judgment compromise and a consent taxation order in HCMC No. 272 of 2013. The parties to these Court orders included the Attorney General and the 1500 former staff of UEB and its successor companies. The said parties (Attorney General and former staff) were not parties to the said suit which sought to set aside the above orders.

This is not a mere case of non-joinder of parties as alleged by counsel for the appellants. To allow such a case to proceed and be determined, would mean condemning the Attorney General and the 1500 former workers of UEB and its successor companies unheard, an act that is contrary to Articles 28 and 44 of the Constitution. On this premise, I cannot therefore fault the learned Justices of the Court of Appeal for upholding the striking out of HCCS No. 49 of 2014.

It suffices to note that, at the trial, counsel for the appellants explained that the reason why they left out the Attorney General was

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because he was never liable and that there was no instruction whatsoever to sue the Attorney General by the 1500 others. This in my view shows that the appellants intended to only protect their individual rights by omitting the Attorney General together with the other former workers and pursue their individual actions.

I am therefore in agreement with the learned Justices of Appeal that the appellants in instituting H.C.C.S. No. 49 of 2014 were riding on the hard fought gains made under the representative actions and turning them into individual actions hence condemning the omitted parties unheard.

A reading of the pleadings shows that the major controversy seems to be the deduction of the advocates (the 4th respondent herein) remuneration from the appellants' terminal benefits. I note that the Attorney General undertook to settle all liabilities arising from the judgment on admission and the compromise. The compromise has been executed through a partial payment to all the beneficiaries. This means that any contrary orders from H.C.C.S. No. 49 of 2014 would not affect the Attorney General and the decree to pay the terminal benefits after deducting the lawyers' fees would still remain enforceable against him making the suit moot.

Counsel for the appellants also argued that the learned Justices of the Court of Appeal ought to have addressed their minds to the provisions of Order 1 Rule 9 and 10 (2) of the Civil Procedure Rules and added the omitted parties to the suit.

Order 1 Rule 9 provides that:

> **No suit shall be defeated by reason of the misjoinder or nonjoinder of parties, and the court may in every suit deal with the matter in controversy so far as regards the rights and interests of the parties actually before it.**

Order 1 Rule 10 states that:

> **The court may at any stage of the proceedings either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether**

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as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit, be added.

A reading of Order 1 Rule 9 (supra) reveals that the provision envisages a scenario where the Court is able to determine the matter in controversy *'so far as regards the rights and interests of the parties before it'*. The appellants turned the representative action into individual actions. And yet these individual interests could not be determined without the rights of the rest of the former workers of UEB and its successor companies being affected.

Indeed, as held by the Court of Appeal, the suit as it was could not be maintained since the omitted parties would be condemned unheard contrary to Articles 28 and 44 of the Constitution

I agree with the submissions of counsel for the respondent that if a necessary party is not impleaded, the suit was liable to be dismissed as in this case. Counsel cited the Indian case of **Sujata Gandhi vs. SB Gandhi**[13] which while discussing the rules equivalent to the above rules held:

a necessary party is a person who ought to have been joined as a party and in whose absence no effective decree could be passed by the court. If such a party is not impleaded the suit is liable to be dismissed.

I am persuaded by the reasoning in the above case and find that by omitting the said parties, the suit was liable to be dismissed.

Furthermore, Rules 9 and 10 are discretionary which discretion must be exercised judiciously. The appellants have not demonstrated how the learned Justices exercised their discretion injudiciously to their prejudice or that they erred in relying upon the constitutional provisions to uphold the striking out of HCCS No. 49 of 2014.

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[13] Appeal No.1079 of 2019

I also find that the case of **Mohan Musisi Kiwanuka vs. Asa Chand**[14] relied upon by the appellants' counsel is distinguishable from the present case. The said case involved issues of land ownership of expropriated property. It dealt with a situation where the High Court had held that the *court* was incompetent and had no jurisdiction to hear the matter in the absence of the Attorney General. Furthermore, the appellant in that case applied to join the Attorney General to the suit but the application was never considered. This Court found that the trial court was competent and could have invoked its powers under Order 1 rule 10(2) if it deemed it necessary rather than disclaiming jurisdiction.

In the present case however, the issue is not about jurisdiction but rather that the suit was incompetent since it had the effect of condemning or affecting the rights of the other persons unheard.

I also note that by proceeding to sue the representatives in their individual capacities, the appellants were subjecting the 5th to 7th respondents to further hardships of defending a suit seeking to set aside the Court orders to which they were party in their representative capacity and which benefitted the former workers of UEB as well as its successor companies. This indeed would go against the doctrine of approbating and reprobating which is to the effect that a person cannot approve of or take benefit from an action and later disapprove of it.

For the foregoing reasons, I hold that ground 1 fails.

Ground 2 **Whether the Learned Justices of the Court of Appeal erred in fact and law when they upheld the trial Court's finding that H.C.C.S. No. 49 of 2014 was barred by reason of *res judicata*.**

It was the appellants' argument that the basis of the learned Justices in making a finding on *res judicata* was an undertaking by the parties in HCMA No.290 of 2007 to refrain from further proceedings. That such an undertaking has never been an element of *res judicata*.

Counsel also argued further that the decision of the Court of Appeal was erroneous because just like the learned trial Judge, the learned

[14] SCCA No. 14 of 2007.

Justices of the Court of Appeal were under the misconception that HCCS No. 49 of 2014 was a fresh claim for terminal benefits and that the same had already been litigated by the High Court.

The respondents' counsel on the other hand supported the decision of the Court of Appeal that the claim under HCCS No. 49 of 2014 concerned the payment of the appellants' terminal benefits after deducting lawyer's fees and was previously adjudicated upon by the High Court. Therefore, the matter was *res judicata*.

Section 7 of the **Civil Procedure Act** provides for *res judicata* as follows:

> **No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try the subsequent suit or the suit in which the issue has been subsequently raised, and has been heard and finally decided by that court.**

The rationale for the doctrine of *res judicata* is to bring finality to litigation and protect parties from defending suits that have already been determined by a competent court. This Court has stated in **Fr. Narsensio Begumisa and 3 others vs. Eric Tibebaga**[15] that, *"the defence of res judicata is a bar to a plaintiff whose claim was previously adjudicated upon by a court of competent jurisdiction in a suit with the same defendant or with a person through whom the defendant claims."*

In **Lotta vs. Tanaki**[16] it was held that:

> **The doctrine of res judicata is provided for in Order 9 of the Civil Procedure Code of 1966 and its object is to bar multiplicity of suits and guarantee finality to litigation. It makes conclusive a final judgement between the same parties or their privies on the same issue by a court of competent jurisdiction in the subject matter of the suit. The scheme of section 9**

[15] SCCA No 17 of 2002.
[16] [2003] 2 EA 556.

therefore contemplates five conditions which, when co-existent, will bar a subsequent suit. The Conditions are: (i) the matter directly and substantially in issue in the subsequent suit must have been directly and substantially in issue in the former suit; (ii) the former suit must have been between the same parties or privies claiming under them; (iii) the parties must have litigated under the same title in the former suit; (iv) the court which decided the former suit must have been competent to try the subsequent suit; and (v) the matter in issue must have been heard and finally decided in the former suit.

Similarly, this Court in the case of **Mashukar & Anor vs. Attorney General**[17], stated the broad minimum conditions that guide courts in determining whether a matter is *res judicata*. They are as follows:

1. **There has to be a former suit or issue decided by a competent court.**
2. **The matter in dispute in the former suit between parties must also be directly or substantially in dispute between the parties in the suit where the doctrine is pleaded as a bar.**
3. **The parties in the former suit should be the same parties or parties under whom they or any of them claim, litigating under the same title.**

In summary, in order to successfully rely on the defence of *res judicata*, it has to be proved that:

a) There exists a previous suit in which the matter was in issue;
b) a competent court heard the matter in issue;
c) the matter in issue was heard and finally decided in the former suit.
d) the issue has been raised once again in a fresh suit.
e) the parties were the same or litigating under the same title;

The learned Justices of the Court of Appeal addressed their mind to the law on *res judicata* and dealt with the issue as follows:

[17] No. 20 of 2002 (SC).

1 . T - E

"the issue under this contention is whether HCCS No. 49 of 2014 was res judicata. Counsel for the appellant has submitted that the two suits have two different causes of action and different parties. While counsel for Respondent submitted that the prayers sought in Civil Suit No. 49 of 2014 were similar to those in HCMA No. 234 of 2012...Three situations appear to be essential for the doctrine to apply; one, the matter must be directly and substantially in issue in the two suits. Two parties must be the same parties or under the same title. Lastly, the matter was finally decided in the previous suit. All the three situations must be available for the doctrine of res judicata to operate. The trial judge found as follows:

'I am in agreement with learned counsel for the defendants that the claim as indicated in the plaint concerns payment of the plaintiffs' terminal benefits after deducting the lawyers' fees ... These issues have been substantially heard and determined by this Court. By the plaintiffs who have the same claim as those who litigated before bringing this suit on similar facts, offends the doctrine of res judicata'

Again I can find no basis to fault the trial judge with this finding. I can only add that the parties themselves undertook in HCMA No.290 of 2007 that no further proceedings for consequential orders shall be instituted by the plaintiff or the said beneficiaries.... Given the multitudes of suits and applications in this matter, it is easy to forget what the parties themselves undertook to do including ending the litigation which undertaking this court will hold them to. In any case as I have shown before, some payments had already been made by UEDCL, UETCL UEB (In Liquidation) and the Attorney General under this settlement'

From the above finding, I note that the learned Justices rightly addressed themselves to the law on *res judicata*. HCMA No.290 of 2007 was not the basis for making the finding on *res judicata*. It was simply an addition to buttress the finding made by the learned trial Judge.

Having perused the Plaint in HCCS No. 49 of 2014, I am in agreement with the learned Justices of the Court of Appeal that the claim under the said suit revolves around the payment of the appellants' terminal benefits after deducting the lawyers' fees. The learned Justices of the

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Court of Appeal did not misconstrue the claim in HCCS No. 49 of 2014 as a fresh claim for terminal benefits.

The issue of payment was dealt with by Mwangusya, J. (as he then was) in High Court Misc. Application No. 234 of 2012. Indeed, one of the issues for determination in that application was *'whether all payments should be made through the applicant's lawyers or alternatively through the official receiver/ liquidator Uganda Electricity Board after offsetting the Lawyers' fees.'* The learned Judge answered the issue in the affirmative and ordered that *'all payments arising out of HCCS No. 138 of 2008, HCCS No. 967 of 2005 and HCCS No. 760 of 2006 be paid through Official Receiver/ Liquidator Uganda Electricity Board in Liquidation after deducting the lawyers' fees'*. Clearly, this issue was finally decided by the High Court in Misc. Application No. 234 of 2012.

I therefore agree with the learned Justices of the Court of Appeal that HCCS No. 49 of 2014 offended the doctrine of *res judicata.*

The appellants' counsel also argued that the claim in HCCS No. 49 of 2014 was not *res judicata* since it involved a new party, the 4th respondent.

The mere addition of a party in a subsequent suit does not automatically render the doctrine of *res judicata* inapplicable. A party cannot evade the said doctrine by just doing cosmetic surgery to its pleadings. The subject of litigation has not changed. The plaintiffs in the new cause were part of the claimants in the representative suit.

The inclusion of the 4th respondent could not negate the fact that the claim in HCCS No. 49 of 2014 revolved around the payment of the appellants' terminal benefits after deducting the lawyers' fees, a claim similar to Misc. Application No. 234 of 2014.

Therefore, the doctrine of *res judicata* can still be invoked since the addition of the party would just be to give the case a face lift by beautifying it in order to litigate over the same issue with the same opponent and nothing else.

Arising from the above, I hold that ground 2 also fails.

Grounds 3, 4 and 5

h. T-E

These grounds challenged the holding of the learned Justices of the Court of Appeal that the appellants did not have *locus standi* to file HCCS No.49 of 2014.

The appellants contended that the representative orders granted to the 5th -7th respondents to represent them in Court do not bar them from filing a suit to set aside those orders which their representatives were party to and had endorsed. The respondents on the other hand contended that the appellants are bound by the orders of Court that their representatives were party to and had endorsed.

The Court of Appeal at page 17-19 of the Judgment dealt with the issue of the appellants' *locus standi* as follows:

"A representative action is to prevent a proliferation of action in court, which unfortunately is exactly what has happened in this dispute. The trial court also relied on the authority of Jasper Mayeku & 198 others v Attorney General and others HCMA 618 of 2014 where court held that the fact that the 2nd and 3rd respondents in the case were still the appointed and authorized representatives of the ISO employees, the applicants had no locus standi to challenge what was agreed upon by the representatives and advocates. The trial judge used the same analogy and found that since the fifth to eight Respondents were still the authorized representatives of the plaintiffs then the plaintiffs [appellants] had no locus standi to challenge the orders of court. I agree with this finding of the trial court. If you have a problem with the mandate that you gave your representative in a court action why file a new suit where the same issue under a different court file should be adjudicated afresh? I find that to be an abuse of Court process.... I find that the Appellants are such a splinter group which are now trying to deny the representative orders or instructions they gave the 5th -8th respondents to sue on their behalf to be paid their benefits... which instructions they are now throwing in doubt in the pleadings as plaintiffs in the trial court."

I am in agreement with the above holding. It cannot be over emphasized that the purpose of a representative suit under Order 1 rule 8 is to allow individual litigants having similar interests in a matter to collectively pursue their claims in Court through the filing of a single suit rather than lodging multiple suits seeking similar claims.

The representatives in instituting and prosecuting a representative action are not only acting for themselves but also on behalf of those that they represent. It thus follows that, unless the Court orders otherwise, any judgment or order made in a representative action is binding on all persons represented. The represented parties are treated as being present in the proceedings through their representatives. In my considered view, an individual litigant who consented to a representative action, cannot challenge the validity or binding nature of the judgment arising from the representative suit. I am persuaded by the holdings of the Supreme Court of India in **K.S. Varghese & others vs. St. Peters & St. Paul's Syrian Orthodox Church and others**[18] wherein it was held as follows:

> **This Court in R. Venugopala Naidu & Ors. vs. Venkatarayulu Naidu Charities & Ors. (1989) Supp 2 SCC 356 has dealt with the suit under section 92 and Order 1 Rule 8 of CPC and it was held that such a suit is the representative action of a large number of persons who have a common interest. The suit binds not only the parties named in the suit but all those who are interested in the trust. It is for that reason Explanation 6 to section 11 CPC constructively bars by res judicata the entire body of interested persons from re-agitating the matters directly in issue in an earlier suit under section 92 CPC.**

The Indian Supreme Court re-emphasized the above position in **Fr. Isaac Mattammel Cor-Episcopa v St. Mary's Orthodox Syrian Church and Others**[19], by holding that:

> **... no such interference can be made by any court after the decision has been rendered by this Court in a representative suit which is binding on all concerned and it is the constitutional duty of all concerned to obey the judgment and order of this Court...There can be no further litigation as the decision in the representative suit is binding.**

[18] (2017) 15 SCC 333

[19] Civil Appeal Nos. 7115-7116 of 2019.

From the above persuasive decisions, it follows that the appellants as former employees of UEB and its successor companies are bound by the Orders of Court arising in High Court Misc. Application No. 234 of 2012, the post judgment compromise, and the consent taxation order arising from HCMA No.272 of 2013. This implies that they did not have *locus standi* to file a fresh suit seeking to set aside these Orders. The appellants' lack of *locus standi* is further fortified by Explanation 6 under **Section 7** of the **Civil Procedure Act** which provides that:

> **Where persons litigate bona fide in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in that right shall, for the purpose of this section, be deemed to claim under the persons litigating.**

It is clear from the above explanation that the appellants are barred from re-litigating similar matters that were directly in issue in an earlier suit, a suit whose (favourable) decision they would benefit from.

I also find it strange that the appellants do not challenge the Court award of UGX. 47,000,000,000/= as terminal benefits to the former employees of UEB and its successor companies, a "group" or category in which they are included, but seek to challenge the part of the Judgment directing that the said terminal benefits should be paid after deducting the lawyers' fees. Their action falls foul to the doctrine of approbation and reprobation. In **Osborn's Concise Law Dictionary**[20], the following definition of approbate and reprobate appears: "*To blow hot and cold; a person is not allowed to take a benefit under an instrument and disclaim the liabilities imposed by the same.*"

The appellants cannot be allowed to only approve the actions of their representatives and orders of court benefitting them and in the same breath, reject their representatives' actions or part of the same judgment that ordered the payment of the said terminal benefits after deducting the lawyers' fees.

[20] 11th Edition at page 35

h. T-C

The cases of **Shell (U) Ltd v Muwema Mugerwa & Co. Advocates & Another**[21] and **Ladak Abdullah Mohammed Hussein v Griffith Isingoma Kakiiza**[22] which the appellants relied on to argue that they had a right to challenge the actions of their representatives if such actions violated their rights are distinguishable from the instant case.

In the Shell **case (supra)**, this Court did not deal with the issue of whether the represented parties had *locus standi* to file a suit challenging a Judgment of Court arising from a representative action. The Court was dealing with a Remuneration Agreement entered into by the Advocate and the representative in the suit which was a private arrangement outside the court proceedings and therefore the parties could challenge the actions of their representatives. However, in the present case the appellants' contention is in respect of a Court Judgment directing that their terminal benefits should be paid after deducting the lawyers' fees. In essence, the appellants are challenging a court order in which they were represented and have now turned it against their representatives.

In the case of **Ladak Abdullah Mohammed Hussein V Griffith Isingoma Kakiiza** above, third parties to a consent judgment that was endorsed by the Registrar, sought to set aside the consent judgment. This Court found that the procedure adopted (by way of an application) and the grounds supporting the application to set aside the consent judgment gave the parties *locus* to bring the application and justified the setting aside of the consent judgment.

A third party can therefore challenge a consent order entered by the Registrar if they are adversely affected. In the instant case however, the appellants have no *locus* given that they were already represented in what they seek to set aside unlike in the **Ladak** case where the 3rd parties were not parties to the suit.

Arising from the above, it is my finding that the learned Justices of the Court of Appeal were right to find that the appellants did not have *locus standi* to file HCCS No. 49 of 2014.

I hold that grounds 3, 4 and 5 also fail.

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[21] SCCA No. 2 of 2013
[22] SCCA No. 8 of 1995

h. T-E

Ground 6 and 7

These two grounds challenged the finding of the learned Justices of the Court of Appeal that H.C.C.S. No. 49 of 2014 was filed using a wrong procedure.

The Court of Appeal at page 20 of the Judgment dealt with the issue of procedure as follows:

"the trial judge found that once a compromise or consent is entered and the court endorses the same, it becomes an effective court order or decree. The court found that although these compromises are treated as agreements they are in actual sense not mere agreements but orders of court. The trial judge (page 63 Record of appeal) went on to find:

'...they are orders of court and can be executed as such. Therefore, if they are challenged, the procedure through which they can be challenged is laid down in the law...it would be highly irregular and improper for this Court to quash its own previous judgment in the way the plaintiffs suggest. It would have the effect of this Court sitting on appeal in its own decision. I also agree that this court became functus officio once it endorsed the consent agreements and passed the decree and order...'

I generally agree with the finding of the trial judge even though I would add that a consent judgment could be set aside under an existing suit on proof of fraud, undue influence deceit, collusion and illegality. The trial judge then offered the correct procedure that the parties may use if such orders are to be challenged (page 64 Record of Appeal) and found

'one can appeal to the court of Appeal under section 66 of the Civil Procedure Act or one can seek a review of the decision under s. 82 of the Civil Procedure Act in the same Court but not filing a fresh suit.'

Once again I cannot fault the trial Court's finding on this ground."

The appellants filed HCCS No. 49 of 2014 seeking to set aside part of a Judgment on Admission in HCMA No. 234 of 2021, a post judgment compromise and a consent taxation Order. The Judgment on Admission was passed by a Judge of the High Court. The post judgment compromise was equally endorsed by a Judge of the High

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Court. A post judgment compromise once endorsed by court becomes a judgment of Court. (See: **Saroj Gandesha v Transroad Ltd.**[23]). The procedure therefore for challenging a judgment or orders of a High Court Judge is well set out in various statutes. One can appeal (in the case of a judgment on admission) or file an application for review (in case of a post judgment compromise).

Regarding the issue of a consent taxation Order, this Order was endorsed by the Registrar in his capacity as a taxing master. The procedure for challenging a decision of a Registrar is provided for under **Order 50 rule 8** of the **Civil Procedure Rules** as follows:

> **Any person aggrieved by any order of a Registrar may appeal from the order in the High Court. The appeal shall be by motion on notice.**

The case of **Ladak Abdullah Mohammed Hussein vs. Griffith Isingoma Kakiiza (supra)** that counsel for the appellants relied on to argue that a litigant can adopt any procedure to challenge a decision of the court is misconstrued and distinguishable from the instant case. It did not give parties liberty to choose any procedure a party desired to use. If this was the case, then there would be no need of having laws governing procedure. The case simply set out procedures to be adopted in a suitable case depending on the circumstances of the case. It observed that *"in a suitable case, a third party could apply for review... But he can bring objection proceedings against execution or bring a fresh suit or file an application to set aside the decree order."*. In that case, this Court was dealing with a consent judgment entered by the Registrar of the High Court unlike in the present case where the appellants seek to set aside orders of a Judge and a Registrar in a single suit. Indeed, in the **Ladak** case Court was of the view that the suitable procedure adopted to set aside the consent order entered by the Registrar was by way of an application.

I agree with the trial Judge that the procedure adopted by the appellants in the circumstances is indeed alien to our jurisprudence. I also agree with the learned trial Judge's observation that:

"... a person who seeks to challenge a consent order can adopt whichever procedure they feel desirable to them. If it is a taxation order

[23] SCCA No. 13 of 2009.

the procedure for challenging the same is clear. An appeal to the High Court is in order. If it is a compromise, then an application for review setting aside from that will be in order too. This would enable the Court to handle the case with the files from which the orders were made available to it. However, a fresh suit complicates the whole process as it will have a distinct and separate file independent from all the files complained about. It also leads to misjoinder of causes of action which should ordinarily be handled separately. For example, a taxation order and compromise order which were made on separate days and one before the Registrar and the other before a judge are challenged in the same suit."

Arising from the above, it is my finding that the learned Justices of the Court of Appeal did not err, when they found that in filing HCCS No. 49 of 2014, to set aside part of the judgment on admission in HCMA No. 234 of 2012, a post judgment compromise, and a consent taxation order, the appellants adopted a wrong procedure. The suit was actually a disguised appeal.

Therefore, grounds 6 and 7 also fail.

Conclusion and Orders

As a result, since all the grounds of appeal fail, I would dismiss the appeal with costs to the Respondents in this Court and in the courts below. The order striking out H.C.C.S. No. 49 of 2014 is upheld.

Dated at Kampala this ..... day of ..... 2023.

.....

PROF. LILLIAN TIBATEMWA-EKIRIKUBINZA
JUSTICE OF THE SUPREME COURT.

THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA AT KAMPALA

(Coram: Mwondha, Tibatemwa-Ekirikubinza, Tuhaise, Chibita, Musoke, JJ.SC)

CIVIL APPEAL NO. 18 OF 2020

BETWEEN

1. DISON OKUMU
2. JOSEPH HENRY NDAWULA
3. EDWARD RUBEGA
4. STEPHEN MUKASA
5. MUBURU FREDRICK
6. STEPHEN EPELU
7. MARY WACHA
8. OYELLA ROSE EVE

::APPELLANTS

AND

1. UGANDA ELECTRICITY TRANSFORMATION CO. LTD
2. UGANDA ELECTRICITY DISTRIBUTION CO. LTD
3. YGANDA ELECTRICITY BOARD (In Liquidation)
4. ALEX BASHSHA T/A BASHASHA & CO. ADVOCATES
5. PAUL NYAWARERE
6. HENRY KYAMBADDE
7. JOHN WALUGO

RESPONDENTS

(Appeal against the judgment and orders of the Court of Appeal at Kampala before; Kakuru, Kiryabwire & Madrama, JJA dated 20th July 2020, Civil Appeal No. 28 of 2017)

JUDGMENT OF MWONDHA, JSC

I have had the benefit of reading in draft the judgment of my learned sister Tibatemwa-Ekirikubinza, JSC.

I concur with the analysis, decision and the orders proposed.

As all other members of the Coram concur, the appeal is dismissed as per the orders proposed in the lead judgment.

Dated at Kampala, this 12th day of Sept 2023

.....

Mwondha

Justice of the supreme court

THE REPUBLIC OF UGANDA
IN THE SUPREME COURT OF UGANDA AT KAMPALA
CIVIL APPEAL NO. 18 OF 2020

1. **DISON OKUMU**
2. **JOSEPH HENRY NDAWULA**
3. **EDWARD RUBANGA**
4. **STEPHEN MUKASA**
5. **MUBIRU FREDRICK**
6. **STEPHEN EPILU**
7. **MARY WACHA**
8. **OYELLA ROSE EVE::::::::::::::::::::::::::APPELLANTS**

VERSUS

1. **UGANDA ELECTRICITY TRANSMISSION CO. LTD**
2. **UGANDA ELECTRICITY DISTRIBUTION CO. LTD**
3. **UGANDA ELECTRICITY BOARD (IN LIQUIDATION)**
4. **ALEX BASHASHA T/A BASHASHA & CO. ADVOCATES**
5. **PAUL NYAMARERE**
6. **JOHN KYAMBADDE**
7. **JOHN WALUGO::::::::::::::::::::::::::::::::::RESPONDENTS**

(Appeal from the decision of the Court of Appeal (Kakuru, Kiryabwire and Madrama, JJA) in Civil Appeal No. 28 of 2017 dated 20th July, 2020)

CORAM: HON. LADY JUSTICE FAITH MWONDHA, JSC
HON. LADY JUSTICE PROF. LILLIAN TIBATEMWA-EKIRIKUBINZA, JSC
HON. LADY JUSTICE PERCY TUHAISE, JSC
HON. MR. JUSTICE MIKE CHIBITA, JSC
HON. LADY JUSTICE ELIZABETH MUSOKE, JSC

JUDGMENT OF ELIZABETH MUSOKE, JSC

I have had the advantage of reading in draft the judgment of my learned sister Prof. Tibatemwa-Ekirikubinza, JSC. I agree with it and for the reasons

given by my learned sister, I too would dismiss the appeal with costs to the respondents.

Dated at Kampala this ..... day of.....2023.

.....

Elizabeth Musoke

Justice of the Supreme Court

THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA
AT KAMPALA

(CORAM: MWONDHA, TIBATEMWA-EKIRIKUBINZA,TUHAISE, CHIBITA, MUSOKE, JJ.SC.)

CIVAL APPEAL NO.18 OF 2020

BETWEEN

1. **DISON OKUMU**
2. **JOSEPH HENRY NDAWULA**
3. **EDWARD RUBANGA**
4. **STEPHEN MUKASA**
5. **MUBIRU FREDRICK**
6. **STEPHENE EPELU**
7. **MARY WACHA**
8. **OYELLA ROSE EVE**

::APPELLANTS

AND

1. **UGANDA ELECTRICITY TRANSMISSION CO.LTD**
2. **UGANDA ELECTRICITY DISTRIBUTION CO. LTD**
3. **UGANDA ELECTRICITY BOARD (IN LIQUIDATION)**
4. **ALEX BASHASHA T/A BASHASHA &CO.ADVOCATES**
5. **PAUL NYAMARERE**
6. **HENRY KYAMBADDE**
7. **JOHN WALUGO**

:::::::::::RESPONDENTS

[Appeal from the Judgment and orders of the Court of Appeal at Kampala before Hon Justices: (Kakuru, Kiryabwire &Madrama, JJA) dated 20th July 2020 in Civil Appeal No.28 of 2017]

JUDGMENT OF TUHAISE, JSC.

I have had the benefit of reading the lead Judgment of Hon Justice Prof. Tibatemwa-Ekirikubinza, JSC.

I agree with the decision, and the orders therein.

Dated at Kampala, this 12th day of Sept 2023

Percy Night Tuhaise

JUSTICE OF THE SUPREME COURT

THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA

AT KAMPALA

(CORAM: MWONDHA, TIBATEMWA-EKIRIKUBINZA, TUHAISE, CHIBITA, MUSOKE, JJ.SC)

CIVIL APPEAL NO: 18 OF 2020

BETWEEN

DISON OKUMU
JOSEPH HENRY NDAWULA
EDWARD RUBANGA
STEPHEN MUKASA
MUBIRU FREDRICK
STEPHENE EPELU
MARY WACHA
OYELLA ROSE EVE

:: APPELLANTS

AND

UGANDA ELECTRICITY TRANSMISSION CO. LTD
UGANDA ELECTRICITY DISTRIBUTION CO. LTD
UGANDA ELECTRICITY BOARD (IN LIQUIDATION)
ALEX BASHASHA T/A BASHASHA & CO. ADVOCATES
PAUL NYAMARERE
HENRY KYAMBADDE
JOHN WALUGO

::::::::::::::RESPONDENTS

[Appeal from the Judgment and orders of the Court of Appeal at Kampala before Hon. Justices: (Kakuru, Kiryabwire and Madrama JJA) dated 20th July 2020 in Civil Appeal No. 28 of 2017]

JUDGMENT OF CHIBITA, JSC

I have had the benefit of reading in draft the judgment of my learned sister, Hon. Lady Justice Prof. Lilian Tibatemwa-Ekirikubinza, and agree with her conclusion and orders she has proposed.

Dated at Kampala this ……12th……day of ……Sept……2023

Mike J. Chibita

JUSTICE OF THE SUPREME COURT